No. 14626

United States Court of Appeals

For the Ninth Circuit.

JESSE E. HALL, WEATHERFORD OIL TOOL COMPANY, INC., a Corporation; WEATHERFORD SPRING COMPANY OF VENEZUELA, C.A., a Corporation; HALL DEVELOPMENT COMPANY, C.A., a Corporation; WEATHERFORD, LTD., a Corporation; WEATHERFORD INTERNACIONAL, S.A., DE CV., a Corporation; NEVADA LEASEHOLD CORPORATION, a Corporation; PARKER INDUSTRIAL PRODUCTS, INC., a Corporation,

Appellants,

vs.

KENNETH A. WRIGHT and B & W, INC., a Corporation,

Appellees.

KENNETH A. WRIGHT and B & W, INC., a Corporation,

Appellants,

vs.

JESSE E. HALL, WEATHERFORD OIL TOOL COMPANY, INC., a Corporation, et al.,

Appellees,

Transcript of Record

In Nine Volumes

Volume I
(Pages 1 to 504)

Appeals from the United States District Court for the Southern District of California, Central Division.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco—10-7-55

No. 14626

United States
Court of Appeals
For the Ninth Circuit.

JESSE E. HALL, WEATHERFORD OIL TOOL COMPANY, INC., a Corporation; WEATHERFORD SPRING COMPANY OF VENEZUELA, C.A., a Corporation; HALL DEVELOPMENT COMPANY, C.A., a Corporation; WEATHERFORD, LTD., a Corporation; WEATHERFORD INTERNACIONAL, S.A., DE CV., a Corporation; NEVADA LEASEHOLD CORPORATION, a Corporation; PARKER INDUSTRIAL PRODUCTS, INC., a Corporation,

Appellants,

vs.

KENNETH A. WRIGHT and B & W, INC., a Corporation,

Appellees.

KENNETH A. WRIGHT and B & W, INC., a Corporation,

Appellants,

vs.

JESSE E. HALL, WEATHERFORD OIL TOOL COMPANY, INC., a Corporation, et al.,

Appellees,

Transcript of Record
In Nine Volumes

Volume I
(Pages 1 to 504)

Appeals from the United States District Court for the Southern District of California, Central Division.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—10-7-55

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

INDEX PAGE

INDEX PAGE

INDEX PAGE

INDEX PAGE

INDEX PAGE

NAMES AND ADDRESSES OF ATTORNEYS

For Appellant Jesse E. Hall:

THOMAS E. SCOFIELD,
PHILIP SUBKOW,
727 West 7th St.,
Los Angeles 17, Calif.

For Appellees and Appellants Kenneth A. Wright, et al.:

LYON & LYON,
811 West Seventh St.,
Los Angeles 17, Calif.

In the District Court of the United States, Southern District of California, Central Division

Civil No. 7839-WM

JESSE E. HALL,

Plaintiff,

vs.

KENNETH A. WRIGHT and B. & W., INC., a California Corporation,

Defendants.

COMPLAINT—ACTION FOR DECLARATORY RELIEF, REFORMATION OF CONTRACT, AND FOR AN INJUNCTION AND DAMAGES

Plaintiff complains and alleges:

I.

Plaintiff is a citizen of the State of Texas, and resides at Weatherford, County of Parker, State of Texas; and the defendant Wright is a citizen of the State of California, residing in the County of Los Angeles, State of California, and the defendant B. & W., Inc., is a corporation organized and existing under the laws of the State of California, with its principal place of business at Long Beach, County of Los Angeles, State of California. The matter in controversy exceeds, exclusive of interest and [2*] cost, the sum of $3,000.00.

*Page numbering appearing at foot of page of original Certified Transcript of Record.

II.

Prior to April 16, 1941, plaintiff was the inventor of certain inventions relating to well bore cleaning devices, particularly wall scratchers, and to structures employing the same and to methods for their use in the drilling and production of oil and other fluids from bore holes in the earth; and that said improvements did include several separate and independent inventive features; and that in accordance with the provisions of the patent laws of the United States thereto pertaining, plaintiff did file in the United States Patent Office applications for patent for said several inventions, to wit: Serial No. 388,891, filed April 16, 1941, and Serial No. 528,183, filed March 27, 1944.

That on or about the 30th day of November, 1943, and the 27th day of June, 1944, the United States Patent Office, in accordance with the provisions of the patent laws and rules of the Patent Office thereunto pertaining, did institute interference proceedings between said patent applications and application and patent of said defendant Wright as follows: Interference No. 81,240 between plaintiff's application Serial No. 388,891 and defendant's application Serial No. 369,389, and Interference No. 81,559 between plaintiff's patent application Serial No. 528,183 and defendant's patent No. 2,338,372 (herewith attached as Exhibit A), issued to defendant Wright as patentee.

That said patent application Serial No. 369,389

has been issued as Patent No. 2,374,317 (herewith attached as Exhibit B).

That the said patent applications of plaintiff and the said patent application and patent of defendant Wright did [3] disclose inventions which were common to said patent applications of plaintiff and said application and patent of defendant Wright. That plaintiff's applications did disclose other inventions which were not common to said disclosure of plaintiff's applications and said defendant Wright's patent application and patent. That said disclosures and inventions not common to the patent applications of plaintiff and to the application and patent of said defendant Wright were not involved in said interference.

III.

That for some time prior to the 30th day of November, 1943, and continuously thereafter plaintiff had been and is now manufacturing and selling wall scratchers of the form containing inventions not common to the said applications of plaintiff and to the said patent and said application of defendant Wright, which form and structure is described and shown in the patent applications of plaintiff.

IV.

That on the 6th day of November, 1945, plaintiff did file in the United States Patent Office in accordance with the provisions and laws and rules thereunto pertaining an application Serial No. 627,013, as a continuation-in-part of application Serial No. 388,891, said patent application Serial 627,013

being directed to the inventions not common to the applications and letters patent involved in said interferences; that said application is now pending in the United States Patent Office and does relate to and cover the wall scratcher heretofore and now being sold by said plaintiff Hall.

V.

That on or about September 15, 1944, in settlement of [4] said interference proceedings, the defendant Kenneth A. Wright on his own behalf and on behalf of the defendant B. & W., Inc., as its agent therefor, and with the approval of said B. & W., Inc., entered into an agreement with plaintiff whereby plaintiff Hall agreed to concede and did concede to the party Wright priority in all inventions common to the applications and patent involved in Interferences 81,240 and 81,559 and whereby said Hall agreed to assign and did assign and transfer to defendant Wright his applications Serial No. 388,891 and Serial No. 528,183; and said Wright did agree to grant and did grant back to plaintiff an exclusive license under all claims to be issued in said Hall applications, said grant limited, however, to the structure of Hall as distinguished from the Wright structure shown in the Wright application (now patent 2,374,317); and the party Hall agreed to pay unto said party Wright as part consideration a royalty of 2½% of the price at which party Hall sold devices under said license. That in evidence of said agreement, and on September 15, 1944, plaintiff Hall and defendant Wright

on his own behalf and on behalf of the B. & W., Inc., as its agent, executed a writing, a true copy of said writing being hereunto attached and marked Exhibit D and made a part hereof.

VI.

That on or about April 30, 1946, defendant Wright transferred the said patent No. 2,338,372 (Exh. A) and patent No. 2,374,317 (Exh. B) to the defendant B. & W., Inc., by an assignment recorded in the United States Patent Office. A true copy of said assignment is hereunto attached as Exhibit C.

VII.

That the plaintiff Hall continued from September 15, 1944, until August, 1946, to manufacture and sell wall scratchers [5] without objection from the defendant Wright and defendant B. & W., Inc., said defendants and each of them having full knowledge of such manufacture and sale by plaintiff, and plaintiff paid the royalties provided under said agreement of September 15, 1944, and said royalty was accepted without objection by said defendants, and plaintiff has otherwise fully performed under said agreement.

VIII.

That in August, 1946, defendants Wright and the B. & W., Inc., severally and jointly solicited customers of plaintiff who had purchased wall scratchers or were prospective purchasers of such wall scratchers, licensed by said defendants to said plaintiff, representing to plaintiff's customers that they would have

no right to use the scratchers manufactured or sold or offered for sale by plaintiff unless they obtained a license to use said scratchers under the patents of defendants Wright and B. & W., Inc., and offering also to sell the wall scratchers manufactured by the defendant B. & W., Inc., representing that no further license was necessary to employ such wall scratchers.

That immediately upon learning thereof plaintiff protested to defendants and each of them regarding such unwarranted and unlawful interference with plaintiff's business, and plaintiff did in August, 1946, and at various times thereafter offer to enter into negotiations with the defendants and each of them for an amicable settlement of their differences (as exemplified by "Supplemental Agreement" Exhibit E attached hereto), but such offer was refused by defendants.

On or about May 14, 1946, and again on or about September 30, 1947, defendant B. & W., Inc., charged plaintiff with infringement of said patent No. 2,338,372 and patent No. 2,374,317, and threaten to bring action against plaintiff and plaintiff's [6] customers on account of the alleged infringement of said patents.

IX.

That defendants and each of them claim that plaintiff has no right to manufacture and sell the wall scratchers manufactured and sold by plaintiff, and that purchasers thereof have no right to use

such wall scratchers without a further license from defendants, and that the manufacture, use, and sale thereof constitutes an infringement of their patents No. 2,338,372 and No. 2,374,317, which contentions are unfounded and unwarranted and not meritorious, but by reason of the assertion thereof a substantial controversy has arisen and exists between these parties respecting plaintiff's rights and the rights of plaintiff's customers under said patents, and the defendants' duties in respect thereto, and it is necessary for the court to declare the same by its judgment herein.

And as and for a Separate and Second Cause of Action Herein, Plaintiff Complains and Alleges:

I.

Plaintiff adopts paragraph I of his first cause of action herein as paragraph I of this, his second cause of action herein, as though herein fully stated.

II.

Plaintiff adopts paragraph II of his first cause of action herein as paragraph II of this, his second cause of action, as though herein fully stated.

III.

Plaintiff adopts paragraph III of his first cause of [7] action herein as paragraph III of this, his second cause of action, as though herein fully stated.

IV.

Plaintiff adopts paragraph IV of his first cause

of action herein as paragraph IV of this, his second cause of action, as though herein fully stated.

V.

Plaintiff adopts paragraph V of his first cause of action herein as paragraph V of this, his second cause of action, as though herein fully stated.

VI.

That in the preparation of said writing of September 15, 1944, the parties hereto did, inadvertently and by mistake, omit the specific and express recitation that said exclusive license granted therein, extended under said Wright patent application Serial No. 369,389, now patent No. 2,374,317 and patent No. 2,338,372 and under any other patent or patent application of defendant Wright or assigned to the B. & W., Inc., necessary to plaintiff or customers of plaintiff in the free and undisturbed use and enjoyment of the said exclusive license and the parties to said writing at all times, intended to include and believed that said writing did include a license and immunity under said application and patent of Wright.

That it was the intention of the parties to said writing of September 15, 1944 (Exh. D), that in and by said writing defendants Wright and B. & W., Inc., should grant and did grant to plaintiff a license to manufacture and sell, and to customers of plaintiff to use wall scratchers theretofore manufactured and sold by plaintiff, and for such license plaintiff should pay to [8] defendants a royalty specified in

paragraph IV thereof, and unless so construed said writing is unilateral, inequitable and without consideration.

That plaintiff did not discover nor know until about August, 1946, that such license or immunity under said application and patents of Wright and the B. & W., Inc., was not expressly included in said writing, and did not discover or know that defendants construed the writing to exclude such license.

VII.

That defendants and each of them knew prior to the execution of said writing of September 15, 1944, and at all times subsequent thereto, until the date hereof, that plaintiff was manufacturing and selling and that the customers of the plaintiff were using wall scratchers disclosed in plaintiff's applications Serial No. 388,891 and Serial No. 528,183, and did receive and accept the royalties from plaintiff under said contract on account of such manufacture and sale, and made no objection at any time from September 15, 1944, to August, 1946, to such sales or to the use by plaintiff's customers of the wall scratchers sold by plaintiff.

VIII.

Plaintiff adopts paragraph VI of his first cause of action as paragraph VIII of this, his second cause of action, as though fully stated herein.

IX.

Plaintiff adopts paragraph VII of his first cause

of action as paragraph IX of this, his second cause of action, as though fully stated herein. [9]

X.

Plaintiff adopts paragraph VIII of his first cause of action as paragraph X of this, his second cause of action, as though fully stated herein.

And as and for a Separate and Third Cause of Action Herein, Plaintiff Complains and Alleges:

I.

Plaintiff adopts paragraph I of his first cause of action herein as paragraph I of this, his third cause of action, as though herein fully stated.

II.

Plaintiff adopts paragraph II of his first cause of action herein as paragraph II of this, his third cause of action, as though herein fully stated.

III.

Plaintiff adopts paragraph III of his first cause of action herein as paragraph III of this, his third cause of action, as though herein fully stated.

IV.

Plaintiff adopts paragraph IV of his first cause of action herein as paragraph IV of this, his third cause of action, as though herein fully stated.

V.

Plaintiff adopts paragraph V of his first cause of action herein as paragraph V of this, his third cause of action, [10] as though herein fully stated.

VI.

Plaintiff adopts paragraph VI of his second cause of action herein as paragraph VI of this, his third cause of action, as though herein fully stated.

VII.

Plaintiff adopts paragraph VII of his second cause of action herein as paragraph VII of this, his third cause of action, as though herein fully stated.

VIII.

Plaintiff adopts paragraph VI of his first cause of action herein as paragraph VIII of this, his third cause of action, as though herein fully stated.

IX.

Plaintiff adopts paragraph VII of his first cause of action herein as paragraph IX of this, his third cause of action, as though herein fully stated.

X.

Plaintiff adopts paragraph VIII of his first cause of action herein as paragraph X of this, his third cause of action, as though herein fully stated.

XI.

Defendants Wright and B. & W., Inc., have, from a time prior to September 15, 1944, and continuously thereafter, until the date hereof, jointly and severally engaged in the manufacture and sale, in interstate commerce, of wall scratchers in competition with [11] plaintiff Hall, the wall scratchers manufactured and sold by defendants Wright and

B. & W., Inc., being different in structure from those manufactured and sold by plaintiff Hall. That the structure manufactured and sold by plaintiff Hall is not described or shown in the Wright application Serial No. 369,389, now patent No. 2,374,317, nor in the Wright patent No. 2,338,372, the claims of the latter patent being directed to a method of using an abrading device in the cleaning of bore hole walls.

That the defendants Wright and the B. & W., Inc., have asserted and threaten to continue to assert said patent No. 2,338,372 and patent No. 2,374,317 in an attempt by defendants and each of them, jointly and severally, to coerce purchasers and prospective purchasers of wall scratchers into buying wall scratchers manufactured by defendants and monopolize the trade and commerce among the several states of the United States in the manufacture and sale of wall scratchers and bore hole cleaners in violation of the antitrust laws of the United States, specifically the Sherman Act. 26 Stat. 209, Sec. 1, 15 U.S.C. 1, and the Clayton Act, 38 Stat. 731, 15 U.S.C. 14; and that plaintiff is thereby injured in his business and property and will continue to be injured if said defendants are not restrained by this court from asserting their patents in the manner aforesaid; and plaintiff has no adequate and complete remedy at law.

Wherefore, Plaintiff Prays Judgment:

1. That the rights and obligations of each of the parties hereto under the writing of September 14,

1944, (Exh. D) be determined and declared by this court in the manner prescribed by law, and that it be declared in a judgment of this court that plaintiff and his successors in interest and assigns are:

(a) Exclusively licensed to manufacture [12] and sell wall scratchers of the form covered by claims issued in the Hall applications Serial No. 388,891, Serial No. 528,183 or any continuation thereof limited, however, to the Hall structure and not such as to be applicable to the structure of Wright, and are

(b) Licensed under the Wright patents 2,338,372 and 2,374,317 to the extent that plaintiff Hall may manufacture and sell and his customers use his scratchers under the grant provided in (a) above.

2. That said writing of September 15, 1944 Exh. D), be reformed to include express provisions n compliance with 1 (a) and (b) above.

3. That the defendants Wright and B. & W., nc., and their attorneys, agents, representatives, mployees, and officials be enjoined during the endency of this action and perpetually thereafter rom asserting said United States Patents No. 338,372 and No. 2,374,317, or any other United tates Patents against plaintiff Hall or his cus-mers on account of the manufacture and sale by id plaintiff or the use by said customers of plain-ff of any wall scratchers, wall cleaning devices censed to Hall under said agreement.

4. That the defendants Wright and B. & W., Inc., and each of them jointly and severally, be restrained, pending the determination of this action and perpetually thereafter, from bringing any action in any court for alleged infringement of said patents No. 2,338,372 and No. 2,374,317 against plaintiff or customers of plaintiff, or in any way interfering with the business of plaintiff in the manufacture and sale of wall cleaners and wall scratchers licensed by this agreement and the use by customers of plaintiff of such wall cleaners and wall scratchers. [13]

5. That the court award to the plaintiff threefold the damages by him sustained on account of the unlawful actions of defendants, and each of them, and in addition a sum as reasonable attorneys' fees.

6. For costs of suit incurred and to be incurred.

7. For such other and further relief as may seem meet and proper in the premises.

/s/ PHILIP SUBKOW,

/s/ THOMAS E. SCOFIELD,
Attorneys for Plaintiff.

State of Missouri,
County of Jackson—ss.

Jesse E. Hall, being sworn, says: That he is plaintiff in the above-entitled action; that he has read the foregoing complaint, and knows the contents thereof; that the same is true of his own

knowledge, except as to the matters which are therein stated on his information or belief and as to those matters that he believes it to be true.

/s/ JESSE E. HALL.

Subscribed and sworn to before me on December 6, 1947.

[Seal] /s/ MARCENE MURPHY,
Notary Public in and for
Said County and State.

My commission expires Jan. 2, 1948. [14]

State of Missouri,
County of Jackson—ss.

I, Ben Nordberg, Clerk of the County Court of Jackson County, the same being a court of record of the aforesaid county, having by law a seal, do hereby certify that Marcene Murphy, whose name is subscribed to the attached certificate of acknowledgment, proof or affidavit, was at the time of taking said acknowledgment, proof or affidavit a Notary Public duly commissioned and sworn and residing in said county, and was, as such, an officer of said state, duly authorized by the laws thereof to take and certify the same, as well as to take and certify the proof and acknowledgment of deeds and other instruments in writing to be recorded in said state, and that full faith and credit are and ought to be given to his official acts; and I further certify that

I am well acquainted with his handwriting and verily believe that the signature to the attached instrument is his genuine signature.

In Witness Whereof, I have hereunto set my hand and affixed the official seal of Jackson County Court this 8th day of December, 1947.

[Seal] /s/ BEN NORDBERG,
Clerk of the County
Court. [14-A]

[Endorsed]: Filed December 10, 1947.

Second Amended Date: January 3, 1953.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION

Upon reading and filing the verified complaint of plaintiff in this action, and it appearing to the satisfaction of the Court therefrom that there are sufficient grounds for granting an order to show cause:

Now, Therefore, It Is Hereby Ordered that the defendants Kenneth A. Wright and B. & W., Inc., be and appear before this Court in the courtroom of the Hon. Wm. C. Mathes in the Federal Building in the City of Los Angeles, County of Los Angeles, State of California, at the hour of 10 a.m., on 22nd day of December, 1947, then and there to show cause, if any, they or any of them have, why they and each of them and their attorneys, representatives, officials, agents, servants, and employees should not be enjoined and restrained [35] during the pendency of this action from asserting said United States Patents No. 2,338,372 and No. 2,374,317, or any other United States Patents against plaintiff Hall or his customers on the account of the manufacture and sale by plaintiff or the use by said customers of plaintiff of the wall scratchers manufactured or sold by plaintiff; and why the defendants Wright and B. & W., Inc., and each of them, jointly and severally, should not be restrained, pending the determination of this action from bringing any action in any court for alleged infringe-

ment of said patents No. 2,338,372 and No. 2,374,317, as set out in the complaint; and from in any way interfering with the business of plaintiff in the manufacture and sale of wall scratchers manufactured or sold by plaintiff and the use by customers of plaintiff of such wall cleaners and wall scratchers.

It Is Further Ordered that a copy of the complaint and memorandum of points and authorities, if they have not already been served, be served on the defendants Kenneth A. Wright and B. & W., Inc., not later than the 12th day of December 1947.

Dated this 10th day of December, 1947.

/s/ WM. C. MATHES,
Judge of the District Court of the United States, Southern District of California, Central Division.

Presented by:

/s/ PHILIP SUBKOW,
Attorney for Plaintiff.

[Endorsed]: Filed December 11, 1947. [36]

[Title of District Court and Cause.]

AFFIDAVIT

State of Texas,
County of Parker—ss.

Jesse E. Hall being duly sworn, deposes and says that he is the plaintiff in the above-styled causes, that he resides and maintains a place of business in Weatherford, Texas, where his company, the Weatherford Spring Company, manufactures, among other things, devices known as Weatherford Reversible Scratchers. A cut showing the construction of the scratchers taken from one of Weatherford's advertising folders is attached hereto and marked Exhibit 1.

These scratchers have been manufactured by affiant since 1941 and have been used extensively with Weatherford's spiral centralizers, also shown in Exhibit 1, by many of the oil companies in their producing operations. Since 1941 affiant has sold his scratchers and centralizers in competition with oil well abrading devices of other manufacturers, including the defendant B. & W., Inc. [37]

In 1944 an interference was declared in the Patent Office between two Hall applications and an application and patent of defendant Wright. An agreement dated September 15, 1944, settling this interference gave affiant the exclusive right to manufacture and sell the Hall type scratchers, which grant he was led to believe and assumed carried with it such rights and privileges as were necessary

to give him and his customers immunity under the patent rights of Wright involved in the controversy. Subsequent to this settlement the manufacture and sale by Hall of his scratchers was unchallenged and undisturbed in so far as defendant Wright was concerned until August, 1946.

About the middle of August, 1946, affiant was informed by the Shell Oil Company that Shell had been threatened by defendant B. & W., Inc., with infringement of the Wright patents 2,374,317 and 2,338,372. Shell Oil Company also advised that it had been solicited by B. &. W., Inc., to take a license under the Wright patents aforesaid for use of scratcher devices purchased from the Weatherford Spring Company.

In the spring of 1947 similar threats and charges were made by defendant B. & W., Inc., against the Standard Oil Company of California. The Standard Oil Company required affiant to indemnify it against any damage which might be assessed in litigation brought by B. & W., Inc., and to intervene and prosecute any infringement suit instituted by B. & W., Inc.

The same circumstances were experienced by affiant in 1947 with its customers, the Gulf Oil Company and the Amerada Petroleum Company. These frequent and reoccurring threats and charges not only caused affiant and his company to lose considerable business they otherwise would have obtained, but also put an added burden and expense upon

Weatherford's selling organization and upon affiant personally. [38]

Further affiant saith not.

/s/ JESSE E. HALL.

Subscribed and sworn to before me on December 15, 1947.

[Seal] /s/ JUNE OWENS,
Notary Public in and for Said County and State.

My commission expires June 3, 1949.

Authorization of Notary Public

State of Texas,
County of Parker—ss.

I, Worth Barnett, County Clerk for the County of Parker, State of Texas, do hereby certify that June Owens, by and before whom the foregoing acknowledgment was taken, was, at the time of taking the same, a Notary in said county, and was duly authorized by the laws of said state to take and certify acknowledgments, and further that I am acquainted with the handwriting of said June Owens, and that I verily believe that the signature to said certificate of acknowledgment is genuine.

In Testimony Whereof, I hereunto set my hand and affix my seal this 15th day of December, 1947.

[Seal] /s/ WORTH BARNETT,
County Clerk.

[Endorsed]: Filed December 18, 1947. [39]

[Title of District Court and Cause.]

ORDER

This cause having come on to be heard before the Court on plaintiff's Order to Show Cause why a temporary injunction should not be issued as requested therein, affidavits having been filed by both parties, counsel having been heard and the Court being advised in the premises and findings of fact and conclusions of law pursuant to Rule 52 F.R.C.P. having been waived:

It Is Hereby Ordered:

That plaintiff's Motion for a Temporary Injunction, as requested in the Order to Show Cause issued by this Court on December 10, 1947, be and the same is hereby denied without prejudice.

Dated: This 19th day of January, 1948.

/s/ WM. C. MATHES,
Judge.

Approved as to Form:

/s/ PHILIP SUBKOW,
Attorney for Plaintiff.

Service of copy acknowledged.

[Endorsed]: Filed and entered January 19, 1948. [43]

In the United States District Court, Southern District of California, Central Division

Civil Action 7839-WM

JESSE E. HALL,

Plaintiff-Counter-defendant,

vs.

KENNETH A. WRIGHT and B. & W., INC., a California Corporation,

Defendants-Counterclaimants.

ANSWER OF DEFENDANTS, COUNTERCLAIM FOR CANCELLATION OF CONTRACT AND COUNTERCLAIM FOR INFRINGEMENT OF PATENTS 2,338,372, 2,374,317 and 2,392,352

Answer of Defendants

Now come the defendants and for answer to the First Cause of Action of the complaint filed herein, admit, deny and allege as follows:

I.

In answer to Paragraph I, defendants admit the allegations thereof.

II.

In answer to Paragraph II, defendants allege that the only invention relating to well bore cleaning devices, and particularly wall scratchers, or to structures employing the same, or to methods for their use in the drilling and production of oil and

other fluids from bore holes in the earth, made by plaintiff prior to April 16, 1941, or any other time, was allowed claim 19 [44] of the abandoned application Ser. No. 388,891; that the only separate and independent inventive feature, as alleged in Paragraph II, was the structure shown in the drawings of said abandoned application and as covered by said allowed claim 19; allege that the invention as claimed in said claim 19 of application Ser. No. 388,891 is the only other invention of said plaintiff disclosed in the applications of plaintiff Ser. Nos. 388,891 and 528,183 which was not common to said disclosures of said applications of plaintiff and said defendant Wright's application and patent referred to in said Paragraph II; admit the remaining allegations of said Paragraph.

III.

In answer to Paragraph III, admit that the plaintiff prior to the 30th day of November, 1943, and continuously thereafter manufactured and sold wall scratchers of a form and structure as shown in the drawings of the patent applications of plaintiff, i.e., Ser. No. 388,891 and Ser. No. 528,183, referred to in Paragraph II of the First Cause of Action.

IV.

In answer to Paragraph IV, admit that on November 6, 1945, the plaintiff filed application Ser. No. 627,013 in the United States Patent Office, that a true copy of said application Ser. No. 627,013, as filed in the United States Patent Office, is ready in

court to be produced by defendants and profert of the same is hereby made, that said true copy will disclose any inventions or alleged inventions contained therein; admit that said application is now pending in the United States Patent Office; deny the remaining allegations of said Paragraph.

V.

In answer to Paragraph V, admit that the defendant Wright, with the knowledge and approval of defendant B. & W., Inc., and the plaintiff Hall executed a writing on September 15, 1944, [45] in terms and words as shown in Exhibit D to the complaint; deny the remaining allegations of said Paragraph.

In further answer to said Paragraph, defendants allege that the structure of Hall referred to in Paragraph V of said complaint, and as stated in Paragraph III of said writing or written agreement, is the structure shown in the drawings and described in the application of Hall Ser. No. 388,-891.

VI.

In answer to Paragraph VI, admit the allegations thereof.

VII.

In answer to Paragraph VII, allege that the defendants subsequent to September 15, 1944, and up to and including the quarter ending June 30, 1946, received royalty for wall scratchers sold by plaintiff in the amounts shown on the reports forwarded by the plaintiff Hall with said royalty

payments, that the original or true copies of said reports are ready in court to be produced by defendants and profert of the same is made; that it was the understanding and belief of said defendants, and each of them, that the scratchers referred to in said reports and covered by the royalty payments were scratchers of the structure as shown in Hall application Ser. No. 388,891; that said defendants have not at any time had knowledge that the scratchers referred to in said reports and covered by said payments were constructed other than in accordance with the drawings and description of said application Ser. No. 388,891; deny that plaintiff has fully performed under said agreement; deny the remaining allegations of said Paragraph.

Further answering, the defendants allege that the plaintiff has failed to perform his obligations under said agreement and has breached the same to defendants' damage in that: [46]

Said plaintiff has failed to furnish a verified statement of the devices sold by the plaintiff and of the moneys or other consideration received from the sale of scratchers for any quarter subsequent to June 30, 1946, and has further failed to pay the royalty due defendants, all as provided for in Paragraphs IV and V of said written agreement of September 15, 1944;

Said plaintiff failed to supply the defendants, or either of them, or cause them to be supplied through the attorney for the party Wright, or otherwise, with copies of all proceedings had in

connection with Hall applications Ser. Nos. 388,891 and 528,183 in accordance with the provisions of Paragraph IV of said written agreement of September 15, 1944, and that said plaintiff caused the attorney who filed application Ser. No. 388,891 to abandon the same without the authority or consent of the defendants, or either of them, with the knowledge that said attorney was acting for and on behalf of the defendants in connection with the prosecution of said application, all in violation of the provisions of said Paragraph VI;

Said plaintiff further failed to comply with the provisions of Paragraph VI of said agreement of September 15, 1944, in that said plaintiff caused the attorney prosecuting said application Ser. No. 388,891 prior to the abandonment thereof and without the knowledge or consent of the defendants, or either of them, to file application Ser. No. 627,013 as a continuation in part of said application Ser. No. 388,891 and incorporating therein the structure covered by the drawings of said application Ser. No. 388,891 and in addition a different wall scratcher structure which said plaintiff well knew at the time of the filing of said application Ser. No. 627,013 had been in prior use and sale by said plaintiff for more than two years prior to the filing date of said application, i.e., November 5, 1945, and thereby jeopardizing the rights of the defendants in and to any inventions [47] covered in said application Ser. No. 388,891 owned by the defendants and perpetrating a fraud upon the Patent Office by

asserting under oath that said additional structure had not been in public use and sale for more than two years prior to the filing date of said application; that although all inventions shown and described in said application Ser. No. 388,891 were assigned by the plaintiff Hall to the defendant Wright by the provisions of paragraph II of said agreement of September 15, 1944, said plaintiff Hall has failed to and refuses to assign application Ser. No. 627,013 as to the invention or inventions therein owned by these defendants and refuses to do so unless the defendants will agree to an amendment and change of said agreement of September 15, 1944.

VIII.

In answer to Paragraph VIII, defendants allege that in the summer of 1946 they became aware that the plaintiff was selling scratchers to customers which were not manufactured in accordance with the drawing and description of said application Ser. No. 388,891, stating that said customers had the right and license to use said scratchers in performance of the method claims of application Ser. No. 528,183 and patent 2,338,372; that the defendants advised certain of plaintiff's customers that said plaintiff did not have the right or license to manufacture and sell wall scratchers of different construction from the structure specified in Paragraph III of said agreement of September 15, 1944; that said statements were made in good faith and for the purpose of advising purchasers of plaintiff's

wall scratchers not constructed in accordance with the provisions of said Paragraph III in order that said customers might be fully advised; that no threats of bringing actions for infringement of defendants' patents were made to plaintiff's customers and on the contrary said customers were advised that if any actions for infringement were brought against them said actions would [48] be brought after there had been a determination of plaintiff's rights under said agreement of September 15, 1944; that the parties have endeavored without success to amicably settle their differences at two meetings held for such purposes in 1947 and in 1948; that a notice of infringement of said patents 2,338,372 and 2,374,317, because of the manufacture and sale of structures not covered by the provisions of Paragraph III of said agreement of September 15, 1944, has heretofore been made in writing to the plaintiff; that defendants deny the remaining allegations of said paragraph.

IX.

In answer to Paragraph IX, defendants allege that plaintiff has no right to manufacture and/or sell wall scratchers not constructed in accordance with the provisions of Paragraph III of said agreement of September 15, 1944, and limited to the structure shown in the drawings of said application Ser. No. 388,891 and that customers of the plaintiff purchasing said scratchers have no right or license to use the same; admit that a contro-

versy exists between the parties respecting plaintiff's rights under said patents.

In Further Answer to the First Cause of Action and as Affirmative Defenses Thereto, Defendants Allege:

X.

That the plaintiff, because of his action in causing application Ser. No. 627,013 to be filed and taking an oath that each and every invention contained therein had not been in public use or sale more than two years prior to the date of the filing of said application or the date of the taking of said oath, as set forth in Paragraph VII of the answer to the First Cause of Action, well knowing that all structures shown in the drawings and described in the specification of said application and not [49] described or shown in the drawings of said application Ser. No. 388,891 were manufactured and sold by him more than two years prior to the date of the filing of said application Ser. No. 627,013 or the date of the taking of said oath, thereby perpetrated a fraud upon the Patent Office and is coming into this Court with such unclean hands that this Court should deny said plaintiff any relief under the action brought by him.

XI.

That the plaintiff, Jesse E. Hall, without the knowledge or consent of the defendants, or either of them, and against their will, instructed and caused the attorney prosecuting Hall application Ser. No. 388,891, and elected by him, to file a document in

the United States Patent Office abandoning said application, well knowing that said application and the inventions thereof were the property of the defendants and had been transferred to the defendant, Kenneth A. Wright, by the provisions of Paragraph II of said agreement of September 15, 1944, that thereafter said plaintiff suppressed said abandonment and the facts thereof and failed to advise these defendants or cause these defendants to be advised of said abandonment or the filing of any documents in connection therewith or to supply or cause to be supplied to these defendants any documents filed in the Patent Office relative thereto, all as provided for in Paragraph VI of said agreement of September 15, 1944, that said defendants did not learn of the abandonment of said application Ser. No. 388,891 until on or about May 17, 1946, long after said abandonment, and from sources other than plaintiff or the attorney elected by him to prosecute said application.

XII.

That said plaintiff instructed and caused the attorney elected by him to prosecute said application Ser. No. 388,891 to file a continuation in part of said application on or about [50] November 6, 1945, Ser. No. 627,013; that said plaintiff instructed and caused said attorney to prosecute said application in the United States Patent Office; that included in said application Ser. No. 627,013 and claimed as an invention therein was the invention assigned to these defendants by the provisions of

Paragraph II of said agreement of September 15, 1944; that also included therein was additional and new matter covering an alleged invention, which was claimed to be an invention therein, which said plaintiff well knew he had manufactured and sold and caused to be used more than two years prior to the filing date of said application, and well knowing that any patent issued upon said application containing claims embodying said new matter would invalidate said patent, including any claims which covered the invention owned by these defendants; that all of said acts were done without the knowledge or consent of these defendants and against their will; that said plaintiff failed to comply with the provisions of Paragraph VI of said agreement of September 15, 1944, in that he failed to forward copies of all proceedings had in connection with said application and the invention of the defendants claimed therein, as provided for therein.

And for Answer to the Second Cause of Action, the Defendants Admit, Deny and Allege as Follows:

XIII.

Defendants hereby adopt, as though herein fully stated, Paragraphs I to V, inclusive, of their Answer to the First Cause of Action as their Answer to Paragraphs I to V, inclusive, of plaintiff's Second Cause of Action.

XIV.

In answer to Paragraph VI of the Second Cause

of Action, defendants deny the allegations [51] thereof.

Further answering said paragraph, defendants allege that by the provisions of Paragraph III of said agreement of September 15, 1944, that the purchasers of scratchers embodying the structure of the drawings of said application Ser. No. 388,891 had the right and license to use the method described in Hall application Ser. No. 528,183 and that said right and license of said customers was limited to the use, in performing said method, of wall scratchers embodying the structure of the drawings of said application Ser. No. 388,891.

XV.

In answer to Paragraph VII of the Second Cause of Action, admit that defendants received and accepted royalties from plaintiff under the agreement of September 15, 1944, on account of the manufacture by plaintiff and the sale to customers of wall scratchers of the structure as disclosed in plaintiff's applications Ser. Nos. 388,891 and 528,183 and received and accepted said royalties and retain the same solely upon such understanding; that no demand has been made by plaintiff for the return of any royalties paid; that defendants deny the remaining allegations of said paragraph.

XVI.

Defendants adopt, as though fully stated herein, Paragraphs VI, VII and VIII, of their Answer to

the First Cause of Action in answer to Paragraphs VIII, IX and X, of the Second Cause of Action.

In Further Answer to the Second Cause of Action and as Affirmative Defenses Thereto:

XVII.

Defendants hereby adopt Paragraph X of their answer to the First Cause of Action as Paragraph XVII of their answer to the Second Cause of Action as though herein fully stated. [52]

XVIII.

Defendants hereby adopt Paragraph XI of their answer to the First Cause of Action as Paragraph XVIII of their answer to the Second Cause of Action as though herein fully stated.

XIX.

Defendants hereby adopt Paragraph XII of their answer to the First Cause of Action as Paragraph XIX of their answer to the Second Cause of Action as though herein fully stated.

And for Answer to the Third Cause of Action, Defendants Admit, Deny and Allege as Follows:

XX.

Defendants adopt, as though herein fully stated, Paragraphs I, II, III, IV, V, VI, VII and VIII, of their answer to the First Cause of Action as answers to Paragraphs I, II, III, IV, V, VIII, IX and X, respectively, of the Third Cause of Action;

defendants further adopt Paragraphs XI and XII of their answer to the Second Cause of Action as answers to Paragraphs VI and VII, respectively, of the Third Cause of Action.

XXI.

In answer to Paragraph XI of the Third Cause of Action, defendants admit that the structures manufactured by the plaintiff Hall in accordance with the drawings of said application Ser. No. 388,891 and the structure manufactured by the plaintiff Hall embodying the structure of Figs. 1 and 2 of the drawings of application Ser. No. 627,013 is different than the structure shown in Wright patent 2,374,317; deny the remaining allegations of said paragraph.

In further answer to said paragraph, allege that any statements or assertions made to purchasers or prospective purchasers of wall scratchers manufactured by plaintiff Hall were made in good faith and in order to fully advise said purchasers [53] of defendants' position and not for the purpose of causing any injury to the business or property of plaintiff but to preserve and protect the rights granted to defendants under said patents 2,338,372 and 2,374,317 and reserved in said defendants by the limitations imposed in said agreement of September 15, 1944, and particularly Paragraph III thereof.

In Further Answer to the Third Cause of Action and as Affirmative Defenses Thereto:

XXII.

Defendants hereby adopt Paragraph X of their answer to the First Cause of Action as Paragraph XXII of their answer to the Third Cause of Action as though herein fully stated.

XXIII.

Defendants hereby adopt Paragraph XI of their answer to the First Cause of Action as Paragraph XXIII of their answer to the Third Cause of Action as though herein fully stated.

XXIV.

Defendants hereby adopt Paragraph XII of their answer to the First Cause of Action as Paragraph XXIV of their answer to the Third Cause of Action as though herein fully stated.

Counter-claim for Cancellation of Contract

As a Counter-claim to the Action Filed and for Cancellation of the Agreement of September 15, 1944, the Defendants and Counter-Claimants Allege as Follows:

I.

That the counter-claimant, Kenneth A. Wright, is a resident and inhabitant of the Southern District of California; that the counter-claimant, B. & W. Inc., is a California corporation, having its principal place of business within the Southern District of California. [54]

II.

That the counter-defendant, Jesse E. Hall, is a resident of the State of Texas, residing in the city of Weatherford in said state.

III.

That the matter in controversy, exclusive of interest and costs, exceeds the sum of Three Thousand Dollars ($3,000); that the counter-defendant, Jesse E. Hall, and these counter-claimants have diverse citizenships and in addition said counter-defendant, Jesse E. Hall, has submitted himself to the jurisdiction of this court as to the subject matter of this counter-claim and as to his person by filing Civil Action 7839 against these counter-claimants.

IV.

That the counter-claimant, Kenneth A. Wright, with the approval of the counter-claimant, B. & W., Inc., entered into a written agreement with the counter-defendant, Jesse E. Hall, on September 15, 1944, said agreement being in terms and words as shown in Exhibit D to the complaint filed by Jesse E. Hall; that the counter-claimants have fully performed all of the obligations to be by them and each of them performed under said agreement.

V.

That the counter-defendant, Jesse E. Hall, has failed to perform the obligations by him to be performed under said agreement of September 15, 1944, and particularly has failed to comply with the provisions of Paragraphs IV and V of said

agreement, although requested in writing by these counter-claimants to so perform, in that said counter-defendant has refused and still refuses and has failed to pay the royalties provided for in Paragraph IV of said agreement since June 30, 1946; and in that said counter-defendant has further failed and refuses to supply these counter-claimants with verified statements or any [55] statement of the devices sold or of the moneys or other consideration received under said agreement for any period of time subsequent to June 30, 1946, as provided for in Paragraph V of said agreement; that thereby said counter-defendant has materially breached said written agreement and particularly the obligations covered by Paragraphs IV and V thereof and to the damage of counter-claimants.

VI.

That the counter-defendant, Jesse E. Hall, has failed to perform the obligations by him to be performed under said written agreement of September 15, 1944, and particularly has failed to comply with the provisions of Paragraph VI of said agreement in that without the knowledge or consent of these counter-claimants and against their will the counter-defendant instructed and caused the attorney prosecuting Hall application Ser. No. 388,891 to file a document in the United States Patent Office abandoning said application well knowing that said application and the inventions thereof had been transferred to Kenneth A. Wright by the provisions of Paragraph II of said agreement of September 15, 1944; that subsequent to the filing of said

abandonment said counter-defendant suppressed said fact and failed to advise these counter-claimants or cause these counter-claimants to be advised of the filing of said abandonment, or to supply or cause to be supplied any documents filed in the Patent Office relative thereto, as provided for in Paragraph VI of said agreement of September 15, 1944; that it was not until on or about May 17, 1946, and long after the abandonment of said application Ser. No. 388,891 that these counter-claimants became aware that said information as to the abandonment of said application Ser. No. 388,891 was not received from counter-defendant nor was the same supplied or caused to be supplied by said counter-defendant or the attorney prosecuting said [56] application.

VII.

That said counter-defendant has failed to perform the obligations by him to be performed under said agreement of September 15, 1944, and particularly has failed to comply with the provisions of Paragraph VI of said agreement, in that said counter-defendant prior to the abandonment of said application Ser. No. 388,891 and on or about November 6, 1945, caused an application entitled Well Bore Cleaning Scratchers to be prepared by the attorney prosecuting the application owned by these counter-claimants, i.e., Ser. No. 388,891, and thereafter executed said application entitled Well Bore Cleaning Scratchers and caused the same to be filed in the United States Patent Office on November 6, 1945, Ser. No. 627,013, all without the knowledge or con-

sent of these counter-claimants and against their will; that no information as to the preparation or filing of said application Ser. No. 627,013, nor a copy thereof, was supplied to these counter-claimants as provided for by the provisions of Paragraph VI; said counter-defendant and the attorney prosecuting said application Ser. No. 627,013 well knowing that the invention of said abandoned application Ser. No. 388,891, as covered by allowed claim 19 thereof, and owned by these counter-claimants, was included in said application Ser. No. 627,013; that subsequent to the filing of said application Ser. No. 627,013, which was filed as a continuation in part of application Ser. No. 388,891, the counter-defendant suppressed the fact of the filing of the same and did not advise these counter-claimants personally or through the attorney elected by said counter-defendant in accordance with the provisions of Paragraph VI of said agreement of September 15, 1944; that the first information these counter-claimants had of the filing of said application Ser. No. 627,013 was August 19, 1946, in a telephone conversation between the counter-claimant Wright and the attorney elected by the counter-defendant to [57] prosecute said application Ser. No. 388,891 and after inquiry had been made by the counter-claimant Wright as to the abandonment of said application Ser. No. 388,891; that later in August, 1946, and subsequent to August 19, 1946, a copy of the drawings, specifications and claims of said application Ser. No. 627,013, and not the complete application as filed, was exhibited to these counter-claimants in Los An-

geles, California, by said attorney elected by the counter-defendant Hall, that the documents so exhibited were not left with these counter-claimants and it was not until the summer of 1947 that a copy of said drawings, said specifications and said claims was furnished these counter-claimants; that these counter-claimants have never been furnished with a complete copy of application Ser. No. 627,-013 as filed in the United States Patent Office; that the failure of said counter-defendant to comply with the provisions of paragraph VI of said agreement of September 15, 1944, has resulted in a material breach of said agreement and has damaged these counter-claimants.

VIII.

That the counter-defendant has failed to perform the obligations by him to be performed under said agreement of September 15, 1944, and particularly has failed to comply with the provisions of Paragraph VI of said agreement, and the covenant of fair dealing between the parties implied in said agreement in that said counter-defendant instructed and caused the attorney elected by him in accordance with the provisions of said Paragraph VI to include in said application Ser. No. 627,013 an alleged invention which said counter-defendant knew had been manufactured and sold by him as early as the year 1941 and more than two years prior to the filing date of said application Ser. No. 627,013 and the date of the execution of said application by said

counter-defendant, all without the knowledge or consent of these counter-claimants and against their will, that thereafter [58] the counter-defendant instructed and caused said attorney elected by him to file amendments to said application in response to the actions of the United States Patent Office upon said application, all without the knowledge or consent of these counter-claimants and against their will; that included in said amendments was an election of the invention to be prosecuted in said application as required by the action of the Patent Office; that said counter-defendant instructed and caused said attorney elected by him to elect to prosecute the alleged invention which he knew had been in prior use and sale for more than two years prior to the filing date of said application Ser. No. 627,013 and not electing to prosecute the invention owned by these counter-claimants by the assignment covered in Paragraph II of said agreement of September 15, 1944, which was shown in certain of the drawings of said application Ser. No. 627,013; that although Wright patent 2,374,317 was cited against claims attempted to be secured by the attorney elected by the counter-defendant Hall and said claims were rejected thereon, nevertheless the counter-defendant Hall instructed and caused said attorney to take an appeal from the rejection of said claims without the knowledge or consent of these counter-claimants and against their will, well knowing that said counter-defendant had in said agreement of September 15, 1944, conceded that Kenneth A. Wright was the first inventor of the

inventions involved in the interferences between the parties, which included the application Ser. No. 369,389 which subsequently matured into Wright patent 2,374,317; that without the knowledge or consent of these counter-claimants and against their will said counter-defendant instructed and caused said attorney elected by him to copy claims from Reistle patent 2,421,434, issued June 3, 1947, for the purpose of endeavoring to have the Patent Office declare an interference between said issued patent and said application Ser. No. 627,013, that although the Patent Office [59] had refused to allow said claims or to set up said interference, nevertheless said counter-defendant instructed and caused an appeal to be filed from the action of the Patent Office so refusing, all without the knowledge and consent of these counter-claimants and against their will; that thereby said counter-defendant has materially breached the agreement of September 15, 1944, and particularly Paragraphs II and VI thereof, and in addition has violated the implied covenant of fair dealing between the parties, all to the damage of these counter-claimants.

IX.

That the counter-defendant, Jesse E. Hall, has failed to perform the obligations by him to be performed under said written agreement of September 15, 1944, and particularly has failed to comply with the provisions of Paragraphs II and VI of said agreement, and has violated the covenant of fair dealing implied in said agreement, in that counter-

defendant instructed and caused the attorney designated by him in accordance with the provisions of Paragraph VI to incorporate matter in said application Ser. No. 627,013 and claim the same to be invention which said counter-defendant knew had been on sale and in public use for more than two years prior to the filing date of said application, i.e., November 6, 1945, that said counter-defendant and the attorney designated by him knew that the issuance of a patent on application Ser. No. 627,013 containing claims covering said matter which had been on sale and in public use would invalidate said patent, including any claims therein covering the invention which was assigned said counter-claimants by the provisions of Paragraph II of said agreement of September 15, 1944; that all of said actions of counter-defendant and his designated attorney were done without the knowledge or consent of these counter-claimants and against their will; that thereby said counter-defendant has breached said agreement of September 15, 1944, including the [60] provisions of Paragraphs II and VI thereof and the implied covenant of fair dealing between the parties, and to the damage of these counter-claimants.

X.

That the counter-defendant continues and threatens to continue to prosecute said application Ser. No. 627,013 without the knowledge or consent of these counter-claimants and to file documents therein against the will of these counter-claimants and unless restrained will cause great and irreparable

damage to these counter-claimants which cannot be adequately compensated for at law by causing a patent to be issued containing claims which will invalidate any claims embodying the invention assigned by Paragraph II of said agreement of September 15, 1944, and will negative said assignment.

XI.

That it is necessary for the purposes of this counter-claim and a determination of the issues raised by the answer filed herein to plaintiff's complaint, that these counter-claimants have a complete and true copy of application Ser. No. 627,013 as filed in the Patent Office, together with a complete and true copy of any and all Patent Office actions in connection therewith and a complete and true copy of any and all documents filed by the attorney designated by the counter-defendant in the prosecution of said application, including the taking of an appeal therein, and demand is hereby made that said complete and true copy be furnished this Court and these counter-claimants.

Counter-claim for Infringement of Letters Patent 2,338,372, 2,374,317 and 2,392,352

And for a Further and Second Counter-claim for Infringement of Letters Patent of the United States, the Counter-claimants Allege as Follows: [61]

I.

That the jurisdiction of this Court is predicated upon the fact that this is a suit for infringement

of Letters Patent of the United States and under the Patent Statutes of the United States, some of the acts of infringement hereinafter complained of have been committed within the Southern District of California, where the counter-defendant, Jesse E. Hall, has a regular and established place of business and where said counter-defendant has submitted to the jurisdiction of this Court by bringing Civil Action 7839 against these counter-claimants.

II.

That on the 4th day of January, 1944, patent 2,338,372 was duly and legally issued to K. A. Wright for Method for Conditioning Well Bores.

III.

That on April 24, 1945, patent 2,374,317 was duly and legally issued to K. A. Wright for Well Production Equipment.

IV.

That on January 8, 1946, patent 2,392,352 was duly and legally issued to K. A. Wright for Method of Placing Cement Plugs in Well Bores.

V.

That subsequent to the issuance of said patents, said K. A. Wright, also known as Kenneth A. Wright, by instruments in writing transferred all of his right, title and interest in and to said Letters Patent and the inventions covered thereby to the counter-claimant, B. & W., Inc., a California corporation; that said B. & W., Inc., now and at all

times subsequent to said assignments has been the owner of the entire right, title and interest in and to said patents and the inventions covered [62] thereby.

VI.

Counter-defendant, Jesse E. Hall, has been and still is infringing said Letters Patent, and each of them, by making wall scratchers or cleaners and selling the same to customers knowing that said customers would use said wall scratchers without the license or consent of the counter-claimants in performing the methods claimed in said patents; and in further infringement thereof has instructed said customers as to the use of said wall scratchers in the performance of said methods and will continue to do so unless enjoined by this Court.

VII.

That said counter-defendant has advised and stated to said customers that said customers have the right and license to employ the methods of said patents and particularly patents 2,338,372 and 2,392,352, all without the consent or license of these counter-claimants and will continue to do so unless enjoined by this Court.

VIII.

That counter-claimants have placed the required statutory notice on all wall scratchers manufactured and sold by them under said patents and in addition have given written notice to the counter-defendant,

Jesse E. Hall, of infringement of said Letters Patent.

Wherefore, defendants-counter-claimants pray:

(1) That with reference to the action filed by plaintiff and the answer thereto filed by the defendants that this Court declare:

(a) That the exclusive license granted to the plaintiff Hall by the provisions of the agreement of September 15, 1944, and particularly Paragraph III thereof, is limitted to the structure shown in the drawings of Hall application Ser. No. [63] 388,891 and does not include the additional matter contained in Hall continuation in part application Ser. No. 627,013.

(b) That the manufacture and sale of the structure licensed under Paragraph III of said agreement of September 15, 1944, to customers gives said customers and users the right under the provisions of said paragraph to use the method of Hall application Ser. No. 528,183.

(c) That the plaintiff Hall is not licensed by the agreement of September 15, 1944, under Wright patents 2,338,372 and 2,374,317, or any other patents of Wright.

(d) That the plaintiff Hall has not performed the obligations to be by him performed under the provisions of said agreement of September 15, 1944, and that his failure to do so has not been excused by these defendants.

(e) That the plaintiff Hall comes into this Court with unclean hands because of his action of including in application Ser. No. 627,013 an alleged invention which said plaintiff Hall knew was in public use and sale more than two years prior to the date of the filing of said application and endeavoring to secure a patent thereon, thereby perpetrating a fraud upon the United States Patent Office and that therefore this Court deny said plaintiff any relief under the action filed.

(f) That this Court deny the declarations and reliefs sought in plaintiff's prayer to the action filed.

(g) That said plaintiff Hall be restrained from asserting to purchasers that any wall scratchers manufactured and sold by him other than wall scratchers manufactured in accordance with the drawings of application Ser. No. 388,891 are covered by the provisions of the license agreement of September 15, 1944. [64]

(2) That with reference to the counter-claim for cancellation of the contract of September 15, 1944, the counter-claimants pray:

(a) That this Court declare said contract to be cancelled and of no further force and effect because of the counter-defendant's breach of the same as set forth in said counter-claim.

(b) That the Court order said counter-defendant to deliver up said agreement of September 15, 1944, for cancellation.

(c) That this Court order said counter-defendant to delete from said application Ser. No. 627,013 all reference to the additional matter therein and over and above the invention shown by the drawings of abandoned application Ser. No. 388,891 and thereafter assign said application Ser. No. 627,013 to the counter-claimant, B. & W., Inc.

(d) That the counter-defendant Hall account to these counter-claimants for any and all royalties due under said contract of September 15, 1944, up to the date of the cancellation of said contract by this Court.

(e) That said counter-defendant Hall be restrained from asserting to purchasers and users and from advertising or otherwise stating that said counter-defendant is licensed to manufacture and sell scratchers under said license agreement of September 15, 1944.

(3) That with reference to the counter-claim for infringement of Letters Patent 2,338,372, 2,374,317 and 2,392,352, counter-claimants pray:

(a) For an accounting for the damages suffered by the counter-claimants because of counter-defendant's infringement of said patents, and each of them. [65]

(b) For an assessment against counter-defendant of costs of action incurred and to be incurred by these counter-claimants.

(c) For a final injunction restraining said counter-defendant, his officers, agents, servants, em-

ployees and attorneys, and each of them, and those in active concert or participation with him, from further infringing said patents, or any of them.

(d) For reasonable attorneys' fees incurred by counter-claimants pursuant to the Patent Statutes and under the discretion of this Court.

(4) For costs of suit incurred or to be incurred by these defendants and counter-claimants with reference to the action filed by plaintiff and with reference to the counter-claim for cancellation filed by these counter-claimants.

(5) Such other and further relief under the answer filed by these defendants to plaintiff's cause of action and under the counter-claims filed by these counter-claimants as may seem meet and proper in the premises to this Court.

B. & W., INC., and
KENNETH A. WRIGHT;

By LYON & LYON,

/s/ REGINALD E. CAUGHEY,
Attorneys for Said Defendants
and Counter-claimants.

Service of copy acknowledged.

[Endorsed]: Filed March 16, 1948. [66]

[Title of District Court and Cause.]

STIPULATION ISSUES TO BE LITIGATED AT TRIAL

It is stipulated by and between counsel for the parties herein that the issues to be litigated at the trial are as follows:

1. Does the agreement evidenced by the writing of Sept. 15, 1944, Exhibit D of the complaint, grant to plaintiff the right and license to manufacture and sell and grant to plaintiff's customers the right and license to use the scratcher manufactured by plaintiff at the time that the writing was executed and exemplified by plaintiff's physical Exhibit No. 40.

2. Does the agreement evidenced by said writing limit the right of plaintiff to manufacture and sell and the right of customers of plaintiff to use the scratcher of structure shown in the drawings of the Hall application Ser. 388,891, [68] Plaintiff's Exhibit 1.

3. Should the writing of Sept. 15, 1944, Exhibit D of said complaint, be reformed to include express provisions that Hall is licensed to manufacture and sell and that his customers are privileged to use a form of scratcher embodying features disclosed in the Hall application Ser. 388,891, Plaintiff's Exhibit 1, and in Hall's application Ser. 528,183, Plaintiff's Exhibit 2, and embodied also in the structure sold by Hall prior to Sept. 15, 1944, as exemplified by Plaintiff's Exhibit 40, but not including other features embodied in the structure of the

scratchers described in the Wright Patent No. 2,338,372, Plaintiff's Exhibit 37, and Patent No. 2,374,317, Plaintiff's Exhibit 38.

4. Does the activity of defendant as complained of constitute a violation of the Sherman Act, 15 USC 1, and the Clayton Act, 15 USC 14.

5. Is the plaintiff guilty of contributory infringement.

6. Are the patents No. 2,338,372, No. 2,374,317 and No. 2,392,352 valid.

7. Should the counter-claim for contributory infringement be denied as without equity.

8b. Should the agreement of Sept. 15, 1944, be cancelled.

/s/ R. E. CAUGHEY,
Attorney for Defendants.

/s/ PHILIP SUBKOW,

/s/ THOS. E. SCOFIELD,
Attorneys for Plaintiff.

[Endorsed]: Filed May 15, 1948. [69]

[Title of District Court and Cause.]

ORDER ON DEFENDANTS' MOTION TO DISMISS COUNTER-CLAIM FOR CANCELLATION OF CONTRACT

This Cause having come on to be heard at trial, no testimony having been received, defendants' counsel having moved in Open Court that the Counter-claim for Cancellation of the Contract be dismissed, counsel for both parties having been heard, and the Court being fully advised in the premises,

It Is Hereby Ordered that Defendants' Counterclaim for Cancellation of the Contract, Exhibit D to the Complaint, be and the same is hereby dismissed with prejudice.

Dated this 25th day of May, 1949.

/s/ WM. C. MATHES,
Judge.

Approved as to form:

/s/ PHILIP SUBKOW,

/s/ THOS. E. SCOFIELD,
Attorneys for Plaintiff.

[Endorsed]: Filed May 31, 1949.

Judgment entered May 31, 1949. [80]

[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT

Comes now plaintiff and prays this Court to give summary judgment as follows:

1. Cancelling the agreement plaintiff's Exhibit 34 of September 15, 1944, and order defendants:

(a) To reassign to plaintiff Hall all the entire right, title, and interest in and to all inventions, patents, and patent applications assigned by plaintiff Hall to defendants;

(b) To restore to plaintiff Hall all moneys heretofore paid by plaintiff Hall to defendants and other considerations passing from plaintiff Hall to defendants under said agreement;

(c) To pay to plaintiff Hall all damages incurred by plaintiff Hall by reason of defendants' breach of said agreement plaintiff's Exhibit 34; and

(d) To account to plaintiff Hall for all profits and [187] other gains obtained by defendants by reason of defendants' breach of said agreement.

This motion is brought upon these papers, the attached memoranda, affidavit of Thomas E. Scofield, and the record in this case.

/s/ PHILIP SUBKOW,

/s/ THOS. E. SCOFIELD. [188]

[Title of District Court and Cause.]

MATERIAL FACTS ADMITTED OR WITHOUT SUBSTANTIAL CONTROVERSY

1. That prior to September 15, 1944, plaintiff Hall had invented a form of scratcher and oil well cleaner described and shown in an application for United States Letters Patent, Serial No. 388,891, filed April 16, 1941, and in an application for United States Letters Patent, Serial No. 528,183, filed March 27, 1944, (see Par. II, pp. 1 and 2 of Def. Answer to Ptf's First Amended Complaint and Par. II, p. 1 of Def. Answer to Ptf's Supplemental Complaint).

2. That prior to September 15, 1944, plaintiff was advertising scratchers and oil well cleaners as shown in the catalogue of the Weatherford Spring Co., (see Ptf's. Exh. 4, p. 7, in this case, and Ex. 4 of Stipulation as to documents and exhibits at pretrial May 15, 1948), and see also pars. 5 and 7 of the Agreed Statement of Facts, dated May 15, 1948, and Stipulation as to [189] Documents and Exhibits, supra, and in advertisement dated April 30, 1942, (see Exh. 5 in this case and Exh. 5 of Stipulation as to Documents and Exhibits, supra) and in Oil Weekly of July, 1941, (Dft. Exh. A, Stipulation as to Documents, supra 5), and Oil & Gas Journal of September, 1941, (Dft. Exh. B, Stipulation as to Documents, supra, p. 5) in applications Serial No. 388,891 and Serial No. 528,183 (Exh. 2 in this case and Exh. 2 of said Stipulation, and par. 2 of said

Agreed Statement of Facts; see also Ptf's. Exh. 1 in this case, and in said Stipulation as to Documents and Exhs. and par. 1 of said Agreed Statement of Facts; and see also Dft's. admission in paragraph II, page 2, lines 16-28 of its original answer to the original complaint).

3. That prior to September 15, 1944, plaintiff Hall was manufacturing and selling scratchers and well cleaners of the form shown in Figs. 1 and 2 of application Serial 627,013, which is a continuation-in-part of application Serial 388,891 (Exh. 3 in this case and Exh. 3 of said Stipulation as to Documents, and see par. 4 of said Agreed Statement of Facts) and of the form and structure shown, and page 3, lines 13 to 16 of Wright affidavit in opposition to motion for preliminary injunction dated Dec. 17, 1947.

4. That defendant Wright did on and prior to September 15, 1944, have actual knowledge that plaintiff Hall was manufacturing, selling, and advertising for sale the scratchers as shown in said catalogues (Exh. 4), see item 2 above, and as shown in Figs. 4, 5, and 6 of said application Serial No. 627,013 (which is Ptf's. Exh. 3, see p. 2 of Stipulation as to Documents, supra) and see Wright affidavit, supra, p. 3, lines 13-16, inclusive.

5. That defendant Wright did have pending in the United States Patent Office an application for Patent, Serial No. 369,389, filed December 10, 1940, now Patent No. 2,374,317, and a United States Patent No. 2,338,372, issued January 4, 1944, (see

Agreed Statement of Facts, par. 12, p. 3; see also Par. II of the Answer [190] to plaintiff's original complaint).

6. That interferences Nos. 81,240 and 81,559 were declared by the United States Patent Office between the Hall applications and the application and patent of Wright on November 30, 1943, and June 27, 1944, respectively (see Ptf's original complaint, p. 2, lines 17-27 and Dfd's answer to said complaint, par. II, p. 3, lines 10, 11, inc.); and that in the course of the interference proceedings defendant Wright did obtain copies of the Hall applications, and did thus acquire actual knowledge of the contents thereof.

7. That there were disclosed in the Hall application Serial 388,891 inventions which were not disclosed in the Wright application and patent and not common to the subject matter of the Hall application and the Wright application Serial 369,389 and Patent No. 2,338,372 not involved in said interference (Dfd's answer to supplemental complaint, par. III, p. 2).

8. That there was, on September 15, 1944, in application Serial 388,891 an allowed claim No. 19 (see Exh. 1, item 2, supra, p. 15 and p. 29, last line).

9. That plaintiff Hall and defendant Wright for himself and for the defendant B. & W. Co. did enter into an agreement dated September 15, 1944, (Ptf's Exh. 34 and Exh. D, Ptf's original com-

plaint) and that defendant B. & W. did accept said agreement (see par. V, p. 3 of Dfd's answer to the amended complaint).

10. That subsequent to September 15, 1944, defendant Wright did assign said Wright application and Wright patent to defendant B. & W. (Par. II of the answer to Ptf's supplemental complaint, and Par. VI of the answer to amended complaint).

11. That on November 6, 1945, plaintiff did file application Serial No. 627,013 as a continuation of application Serial 388,891, and on October 20, 1948, there was filed a second continuing application Serial No. 55,619. [191]

12. That said application Serial No. 388,891 was abandoned on November 9, 1946, (see Exh. 1, p. 61) and Serial No. 627,013 was abandoned on June 30, 1949, (see Exh. 3, p. 86).

13. That defendants since June, 1946, have had knowledge of the abandonment of the applications Serial 388,891 and Serial 528,183, and of the filing of the application Serial 627,013, and since February 1, 1949, have had knowledge of the filing of application Serial 55,619 (Par. VIII, p. 18 of Dfd's counter-claim for declaratory relief in its answer to plaintiff's amended complaint, Par. III, p. 2 of Dfd's answer to Ptf's supplemental complaint).

14. Plaintiff during the period from September 15, 1944, to July, 1946, did pay royalties under said agreement, all as set forth in Defendant's Exhibits

D, E, F, and G (see agreed statement of facts, etc., par. 29 to 32, inc., dated May 15, 1948).

15. That plaintiff and defendants, prior to September 15, 1944, and thereafter up to the bringing of this action, have sold competing scratchers which were generally sold in the same market in the United States and generally compete for patronage with the same customers (Par. 8, p. 2, lines 13-17 of agreed statement of facts, dated May 15, 1948).

16. That the defendants did on or about July, 1946, and have at various times thereafter called the attention of some of Hall's prospective customers to the license agreement of September 15, 1944, and stated that any rights that the plaintiff Hall had were covered by the provisions of said agreement and that in defendants' opinion the plaintiff Hall had no rights under the scratcher shown in Figs. 1 and 2 of application Serial No. 627,013. (Par. 9, p. 2, lines 18 to 25 of agreed statement of facts, supra.)

17. That defendant B. & W. did on April 12, 1947, send a telegram to Gulf Oil Co. (Exh. 19), and on July 8, 1946, a letter to Shell Oil Co. (Ptf's Exh. 14, see stipulation re documents, supra, and agreed statement of facts, par. 15, p. 4). [192]

18. That on May 14, 1946, defendant B. & W. did charge plaintiff Hall and threatened plaintiff with suit for infringement of Patent No. 2,338,372 and Patent No. 2,374,317 (see answer to supplemental complaint, par. VII, p. 3, lines 10-12, inc.,

par. VIII, p. 4, of Dfd's answer to plaintiff's amended complaint).

19. That prior to September 15, 1944, and continuously thereafter, defendant B. & W., Inc., manufactured and offered for sale scratchers made substantially in accordance with the construction shown in the drawings of Patent No. 2,374,317.

20. That on or about December, 1947, defendant did begin to manufacture and sell scratchers under the trade-made "Multiflex" (Ptf's Exh. 57; Admission Par. IX, pp. 4 and 5, Dfd's answer to the amended complaint).

21. That since about December 15, 1949, defendant B. & W., Inc., has manufactured and continue to manufacture and sell scratchers under the trademark Nu-Coil; said Nu-Coil scratchers are shown in the photographs Exhs. 1 and 2 to the supplemental complaint and physical exhibit; see answer to supplemental complaint, par. XI, p. 4.

22. That subsequent to the settlement agreement of September 15, 1944, plaintiff did file in said interferences a concession of priority to defendant Wright, and that thereupon said interferences were terminated, and plaintiff was declared not to be the first inventor of the counts of said interferences, and thereafter plaintiff did prosecute the said application Serial 388,891 for claims urged by applicant to be different from the interference counts and directed to the disposition of the wire abrading element of the scratchers at an inclination to the

radii of the collar and casing on which the collar is mounted (see Ser. 388,891, Ptf's Exh. 1, cl. 4, p. 10, cl. 20, p. 20), and that the Patent Office did on May 31, 1945, reject all claims urged by plaintiff except claim 19 (see Ptf's Exh. 1, paper 27, p. 61). [193]

23. That the application Serial No. 627,013 was filed on November 6, 1945, wherein claims were likewise urged directed to the disposition of the wire at an inclination to the radii of the collar to which they are attached, as set forth in Ptf's Exh. 3, pp. 12 to 17, and p. 11, claim 1 as amended by amendment Exh. 1, p. 20, and cl. 14, p. 34, and that claims including claim 14 were finally rejected and certain claims including claim 1 were allowed on October 23, 1947, (see p. 45); that an appeal was taken to the Board of Appeals (pp. 46 to 48, inc.) and that the Board of Appeals did reverse the final rejection of the Examiner as to claims 9 and 10 and sustained the rejection as to claims 11 to 14, inc., and 16, and dismissed the appeal as to claims 6, 8, and 15 (see p. 81), and that an appeal was taken to the Court of Customs and Patent Appeals (p. 82), and the application was abandoned on June 30, 1949, (docketed July 5, 1949).

24. That application Serial 55,619 was filed on October 20, 1948, as a continuation of Serial 627,013, during the pendency of the appeal of the latter application before the Court of Customs & Patent Appeals, and claims Nos. 18 and 22 to 31 urged therein, and that said claims were finally rejected

on November 4, 1949; that an appeal was taken to the Board of Appeals; that the final rejection of the Examiner was sustained as to claims 18, 22, 25, 26, 27, 28, 29, and 30, and reversed as to claims 23, 24, and 31 (see affidavit of Thomas E. Scofield, Exh. A attached thereto).

25. That defendant Wright filed an application, Serial 777,640 on October 3, 1947, and in said application submitted claims 1 through 17. All of the original claims were cancelled and claims 18 through 25 submitted by amendment dated August 25, 1949. On March 27, 1950, defendant Wright introduced claims 26 through 28 for purposes of interference with plaintiff's application Serial 55,619. [194]

26. An interference No. 84,411 between said application Serial 777,640 and application Serial 55,-619 was declared upon Counts 1 to 3, inc. (claims 23, 24 and 31 allowed in said Hall application Serial 55,619; Scofield Affdt. Ex. 71). That upon motions brought by both parties the Patent Office did dissolve the said interference and that defendant Wright has requested reconsideration of the order of the Patent Office dissolving said interference, which request is now pending (Scofield Affdt.).

/s/ PHILIP SUBKOW,

/s/ THOS. E. SCOFIELD. [195]

[Title of District Court and Cause.]

AFFIDAVIT OF THOMAS E. SCOFIELD

State of Missouri,
County of Jackson—ss.

Thomas E. Scofield, being first duly sworn, deposes and says:

That he is one of plaintiff Hall's counsel in the above-styled case, and that this affidavit and attached exhibits are filed as a supplement to Plaintiff's Motion for Summary Judgment.

1. That Plaintiff's Exhibit 3a, attached, constitutes the certified copy of the Patent Office prosecution of the Hall application Serial No. 627,013 since the trial in May and June, 1949, and supplements Plaintiff's Exhibit 3, which took the prosecution of the appeal by Hall to the Court of Customs and Patent Appeals. [196]

2. That Plaintiff's Exhibit 69, attached, is a Patent Office certified copy of Hall application Serial 55,619, filed October 20, 1948, the same being a continuation of application Serial 627,013 (Plaintiff's Exhibit 3), and a continuation-in-part of application 388,891 (Plaintiff's Exhibit 1).

3. That Plantiff's Exhibit 70, attached, is a Patent Office certified copy of Wright application Serial 777,640, filed October 3, 1947, recently in interference with the Hall application Serial 55,619, Exhibit 69 above.

4. That Plaintiff's Exhibit 71, attached, is a Patent Office certified copy of the interference file No. 84,411, involving Hall, Serial 55,619 (Plaintiff's Exhibit 69 above), and Wright application Serial 777,640 (Plaintiff's Exhibit 70 above), and covering the prosecution from the declaration on April 5, 1950, to the Examiner's "Decision on Motions" dissolving the interference on December 15, 1950.

5. That Plaintiff's Exhibit 72 (physical) offered with this affidavit is a B. & W., Inc., "Nu-Coil" scratcher.

Further deponent saith not.

/s/ THOMAS E. SCOFIELD.

Subscribed and sworn to before me this 17th day of March, 1951.

[Seal] /s/ EARL J. BOUGNAN,
Notary Public.

My commission expires August 11, 1951.

Receipt of copy acknowledged.

[Endorsed]: Filed March 30, 1951. [197]

[Title of District Court and Cause.]

DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DEFENDANTS' COUNTER-MOTION FOR SUMMARY JUDGMENT

Come now defendants and in reply to Plaintiff's Motion for Summary Judgment, move the Court for relief as hereinafter set forth, and show:

I.

Attached hereto and made a part hereof are the following papers constituting a portion of the file of Jesse E. Hall application, Serial No. 55,619, which are before the Patent Office and are not included in the Plaintiff's Motion for Summary Judgment filed with this Court:

(a) A motion filed on behalf of Kenneth A. Wright to dissolve the Interference No. 84,411.

(b) The decision of the Interference Examiner denying the motion of Wright to dissolve the Interference. [199]

(c) Petition, together with its accompanying affidavits, filed on behalf of the party Wright for Reconsideration of the decision of the Patent Office Examiner denying Wright's Motion to Dissolve.

(d) A motion filed on behalf of Jesse E. Hall to dismiss the Petition for Reconsideration.

(e) Ruling of the Patent Office Examiner denying Hall's Motion to Dismiss Wright's Petition for

Reconsideration granting Hall until April 30, 1951, the right to respond to Wright's Petition for Reconsideration.

II.

Affidavit of Kenneth A. Wright dated April 6, 1951.

Defendants pray this Court for Summary Judgment as follows:

(1) Cancelling the Agreement, Plaintiff's Exhibit 34, of September 15, 1944, and ordering plaintiff, Jesse E. Hall

(a) To pay unto defendants all monies due defendants under said contract, Exhibit 34, to the date of such cancellation;

(b) To pay unto defendants damages which defendants have suffered by reason of the plaintiff Hall's fraudulent manipulation of the applications, Serial Nos. 388,891, 627,013 and 55,619, before the United States Patent Office whereby all right and consideration flowing to defendants, or either of them, under the agreement, Plaintiff's Exhibit 34, has been forever lost and destroyed, and

(c) To pay unto defendants, and either of [200] them, all damages incurred by them by reason of the fraudulent manner in which plaintiff has abandoned the Hall application, Serial No. 388,891, and has attempted to substitute therefor the application, Serial No. 627,013 and did delete, change and alter the specifications, claims and drawings of such application, Serial No. 627,013 as to solicit before the

Patent Office a patent for an entirely different invention than that set forth in and by the application, Serial No. 388,891, with the result that said application, Serial No. 388,891 has been forever abandoned and lost and all rights accruing to said defendants or either of them under said application have been forever lost and abandoned.

(d) To pay unto defendants, and/or either of them, all damages incurred by reason of Hall's breach of the Agreement of September 15, 1944, and due to his failure and refusal to abide by the provisions of Paragraph 6 of said agreement, and to carry out the trust imparted to him under the provisions of said agreement and to keep the party Wright informed as to all proceedings taken or had in connection with the application, Serial No. 388,891, until long after the said application was abandoned and impossible to recover.

(e) To pay to the defendants, or either of them, all damage incurred by either or both of them by reason of plaintiff's breach of the said Agreement, Plaintiff's Exhibit 34, by the fraudulent filing of the application, Serial No. 55,619, as the purported continuation-in-part of the application, Serial No. 388,891.

(f) For an order directing the plaintiff, [201] Jesse E. Hall, to account for all royalties due defendants and/or either of them under the Agreement of September 15, 1944, and for an order directing that the plaintiff, Hall, and all those in privy with him, shall hereafter be enjoined from

manufacturing, selling, or offering for sale, devices of the application, Serial No. 388,891, or that might be covered by any claim thereof because of plaintiff Hall's breach of the contract of September 15, 1944, and particularly Paragraph 6 thereof, and because of the fraudulent manner in which said plaintiff Hall abandoned and destroyed forever all rights in the defendants under said application, Serial No. 388,891.

The motion here presented is brought upon these papers, the attached Memorandum, affidavit of Kenneth A. Wright, and the record in this case.

April 6, 1951.

LYON & LYON,

By /s/ LEWIS E. LYON,

Attys. for Defendants. [202]

MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF DEFENDANTS' COUNTER MOTION FOR SUMMARY JUDGMENT

It is shown by Plaintiff's Motion for Summary Judgment that plaintiff, Jesse E. Hall, did, on October 20, 1948, file in the United States Patent Office an application, Serial No. 55,619, for Well

Bore Cleaning Scratcher. It is further shown to this court by said motions that plantiff, Hall, had previously filed in the United States Patent Office the application, Serial No. 627,013 which was filed with the Patent Office on November 6, 1945. It will be apparent from the said application, Serial No. 627,013, that the same does not constitute in any sense a continuation-in-part of the application, Serial No. 388,891. The claims filed with the said application, Serial No. 627,013 were all directed to a tangential wire whisker scratcher, a form of scratcher different from and not common to the application, Serial No. 388,891. It will be further shown from the application, Serial No. 627,013 that the drawings of said application were so drawn as to include no part of the disclosure of the application, Serial No. 388,891 and that the only form of structure shown in the application, Serial No. 627,-013, its drawings or its specification, was the tangential form of scratcher.

In the application, Serial No. 627,013 Hall took an oath to the claims of the application as filed as constituting the invention which he had made at that time and which were not in public use or on sale for one year prior to the filing of his application. No claim was included in this application, Serial No. 627,013 that would read upon the disclosure of the application, Serial No. 388,891, nor did Hall at any time in said application take oath to the fact that he had invented a scratcher defined by a claim which would read [203] upon the dis-

closure of the application, Serial No. 388,891. When Hall filed the application, Serial No. 627,013, addressed to the tangential form of scratcher and without advising the defendant, Wright, or defendant, B. & W., Inc., of the fact of the filing of such application, Serial No. 627,013, he allowed the application, Serial No. 388,891 to become abandoned for failure to reply to the rejections of the Patent Office thereto.

The application, Serial No. 388,891 thereby and therefore became abandoned contrary to the trust and obligation imposed upon the party Hall by the provisions of Paragraph 6 of the agreement of September 15, 1944, so that all benefits of said application were forever lost to the defendants.

It will further be shown to this court that the party Hall maliciously and purposely filed the application, Serial No. 627,013 to a different form of scratcher than that disclosed in the application, Serial No. 388,891, for the purpose of avoiding any obligation which he might have to pay unto defendants, or either of them, the royalties due under the agreement of September 15, 1944.

It will be further shown to this court that the party Hall filed the application, Serial No. 627,013 and took oath before the Patent Office to the fact that the disclosures of said application and as defined by the claims therein had not been in public use more than one year prior to the filing of the application, Serial No. 627,013, when as a matter of fact the party Hall knew that the said scratchers as defined in and by said application, namely, to

wit, said tangential scratchers, had been on sale by him and had been in public use for a long time prior to one year preceding November 6, 1945, the date of filing of the said application, Serial No. 627,013. [204]

It will be further shown to this court that the application, Serial No. 627,013, is not in fact or in law a continuation-in-part of the said application, Serial No. 388,891.

It will further appear from said applications that the subject matter of claim 19 of the application, Serial No. 388,891, which stood allowed by the Patent Office at the time of the abandonment of the said application has been forever surrendered and lost and that no valid patent can be obtained thereon because of the abandonment of the said application by the party Hall contrary to the provisions and requirements that he prosecute the application in good faith as required by Paragraph 6 of the contract of September 15, 1944.

It will further appear from the facts before this court that plaintiff Hall continued to pay royalties under the agreement of September 15, 1944, until defendants discovered and learned of the wilful abandonment of the application, Serial No. 388,891, and that thereafter and from the date of such discovery by defendants, that plaintiff Hall has refused to and continues to refuse to pay to the defendants the royalties due under the provisions of said agreement of September 15, 1944.

Plaintiff Hall it is shown has withheld from the Patent Office his knowledge of the construction and operation of the scratchers which he saw being used by the Union Oil Company and as are illustrated in the Jones and Berdine paper. The withholding of this information from the Patent Office was and is an act of bad faith and certainly presents less than the candor required of an applicant for a patent, as set forth by the Supreme Court in its decision in Precision Instrument Mfg. Co. v. Automotive Maintenance Machinery Co., 324 US 805, 89 L. ed. 1381. Had the facts with reference to scratchers as published in the publications referred to in the Board of Appeals' decision been made known to the Board of Appeals, and which facts were in the [205] possession of Hall, it is apparent from the Board of Appeals' decision that the claims could not have been allowed Hall by the Board of Appeals.

That the application, Serial No. 627,013, is not in fact a continuation-in-part of the application, Serial No. 388,891, is evident from the annotations under § 37, Title 35, USCA, where it is stated:

> "A second application must be for substantially the same invention in order that the two applications may be considered one continuous proceeding."

Citing:

> Weston v. White,
> 13 Blatchf. 447, Federal Case 17,459, and

Globe Nail Co. v. Superior Nail Co.,
27 F. 450.

Further in this annotation is found:

"Where an application has been entirely abandoned a second application cannot be considered as a continuation of such abandoned application."

Citing:

Kittle v. Hall,
29 F. 508;

Weir v. Morden,
21 F. 243, and

Lindsay v. Stein,
10 F. 907.

When Hall filed the second application, Serial No. 627,013, and petitioned the Commissioner of Patents to grant him claims only for the tangential wire scratcher, he abandoned entirely the petition to the Patent Office to grant him claims on the invention of the application, Serial No. 388,891. The application, Serial No. 388,891, does not disclose the tangential wire scratcher. In Muncie Gear Works, Inc., v. Outboard M. & Mfg. Co., 315 US 759, 86 L. ed. 1171, the patent in suit was held invalid because the application for the patent did not claim the invention within the statutory period of two years before the entry of the claims. The importance of this case to this consideration comes from the fact that the Supreme Court has held in

this case that it is the claims which the [206] applicant is petitioning the Patent Office to grant which are controlling. Here the party Hall after abandonment of the application, Serial No. 388,891, petitioned the Patent Office to grant him claims only upon the tangential form of structure and did not petition the Patent Office for the grant of any patent claim which would read upon the disclosure of the application, Serial No. 388,891. The application, Serial No. 388,891, was, as admitted, abandoned on November 8, 1945, and could not be revived. It was not until the filing of the application, Serial No. 55,619, filed on October 28, 1948, that there was before the Patent Office a petition for the granting of claims to the subject matter of the application, Serial No. 388,891, and to which application the required supporting oath had been taken. The intervening public use of the scratchers of both Hall, Wright and others, prevents the issuance of a valid patent upon the application, Serial No. 55,619, just as it did in the Muncie Gear Works vs. Outboard M. & Mfg. Co. case. The Congress of the United States in order to stop the dilatory practice of patent soliciting before the Patent Office and the shifting of grounds of patentability in accordance with commercial developments, repealed the renewal statute. That statute had previously permitted the practice of an applicant to prosecute an application to allowance, then to fail to pay the final fee due the Patent Office before the patent would issue, and then to refile the application. The statute was abused and permitted

the practice of filing an application, prosecuting the application as long as it could be prosecuted before the Patent Office, even to formal allowance, then within a year after the formal allowance to renew the application and start in over again. The result was that it permitted the patentee to watch the commercial development of a field, holding the application in the Patent Office for a long period of time, and then to incorporate claims in the application in accordance [207] with the commercial development to cover developments occurring during the intervening period. The statute repealed was Revised Statute § 4897, the Act of March 2, 1927, Chapter 273, § 2, 44 Stat. 1335 and this Act was repealed August 9, 1939. The basis of the repeal is on all fours with the facts of prosecution of the continuing series of applications—Serial No. 388,891 directed to one invention. The filing of the second application, Serial No. 627,013 directed to a second invention not in common with the invention of the application, Serial No. 388,891, and then the filing of the third application, Serial No. 55,619, in an effort to obtain claims which would read upon the earliest and abandoned application. Thus anticipating and watching the commercial development and endeavoring to get claims which are now asserted to cover the form of structure sold by defendants, namely the Multi-Flex and Nu-Coil scratchers. Such practice is not only condemned by the repeal of the renewal statute but is in direct conflict with the decision of the Supreme Court in

Muncie Gear Works v. Outboard M. & Mfg. Co. It is thus respectfully submitted that the party Hall has destroyed all consideration flowing to Wright under the contract Exhibit 34, that that contract should be cancelled and that Hall should be called to account to Wright for the damages which Wright and B. & W., Inc., have suffered because of the breach of trust imposed upon Hall under the provisions of Paragraph 6 of the agreement Exhibit 34. [208]

In the United States Patent Office Before the Board of Interference Examiners

Interference No. 84,411

JESSE E. HALL

vs.

KENNETH A. WRIGHT.

August 3, 1950.

MOTION TO DISSOLVE

Comes Now the senior party Wright and moves that the Interference be dissolved on the following grounds:

I.

With respect to Count 3, this count is unpatentable in view of the following printed publications:

(A) The Oil Weekly, July 7, 1941, page 37, Vol.

102, No. 5 (Copy in Div. 49). A photostatic copy is attached hereto and marked "Exhibit A."

(B) The Oil and Gas Journal, Sept. 11, 1941, page 65 (Copy in Scientific Library). A photostatic copy is attached hereto and marked "Exhibit B."

(C) The Oil and Gas Journal, Dec. 25, 1941, pages 258 and 259. A photostatic copy is attached hereto and marked "Exhibit C."

II.

With respect to Counts 1 and 2, said counts and each of them is unpatentable because they define incomplete combinations. Each count fails to define stops or shoulders on the casing for engaging the scratcher collar when the casing is reciprocated. Unless the casing is provided with [209] stops or shoulders, the whiskers will not rotate the support and walk around the well bore upon reciprocation of the casing.

III.

With respect to Counts 1, 2 and 3, said counts and each of them is unpatentable to the party Hall on the following grounds:

(A) More than seven years elapsed from the date of the printed publications shown in Exhibits A and B attached hereto before claims were first presented by the party Hall relating to the features to which the counts in this Interference are directed.

(B) The Hall application Serial No. 55,619 involved in this Interference is a duplicate of a

previous application Serial No. 627,013, filed previously by the party Hall and prosecuted to final action before the Patent Office.

As to ground I above, each of the publications (A), (B) and (C), was published and was received in the Scientific Library of the United States Patent Office more than one year prior to the filing date of the Hall application Serial No. 55,619 herein involved, and more than one year prior to the filing date of the Wright application [210] Serial No. 777,640 herein involved, and since each of said publications discloses each of the elements of Count 3, each publication constitutes a statutory bar rendering the claims unpatentable to either party. R.S. 4886, 35 USC, Sec. 31.

As to Ground II, Counts 1 and 2 of the Interference relate to a combination of a well casing and a wire scratcher, and the feature of invention has been stated by Hall to reside in the mounting of the whiskers so that reciprocation of the casing causes the scratcher device to shift circumferentially so that each whisker abrades a different area of the well bore upon each casing reciprocation. Well casing is commercially available which is free from shoulders or projections throughout its length. Unless the casing is provided with shoulders or stops to cause axial movement of the scratcher device when casing is reciprocated, turning movement of the scratcher device within the bore hole will not occur. The stops or shoulders are therefore necessary to define a complete combination. A hiatus is thus pres-

ent in Counts 1 and 2, rendering them unpatentable.

As to ground III (A), the party Hall delayed in presenting claims directed to the features of the counts until October 27, 1949, more than eight years after the publication of the advertisements in "The Oil Weekly" and "The Oil and Gas Journal" shown in Exhibits A and B attached hereto. Under the doctrine of Muncie Gear Works, Inc., v. Outboard, Marine & Manufacturing Company, 315 U.S. 759, 86 L.Ed. 1171, these claims were presented too late to be allowed to the party Hall. [211]

With respect to ground III (B), the Hall application 627,013 was filed November 6, 1945, and prosecuted to a final rejection by the Patent Office. After rejection of certain claims by the Board of Appeals, counsel for the party Hall filed an appeal to the Court of Customs and Patent Appeals. While the latter appeal was still pending, the Hall application 55,619 herein involved was filed on October 20, 1948, and the claims presented were broader than those allowed in the earlier application 627,013 and broader than those on appeal to the Court of Customs and Patent Appeals. After Hall had thus enjoyed his "day in court" on the subject matter of application 627,013, and had failed to present claims of the scope of the counts of this Interference, he refiled the same application with identical drawings and identical specifications and began all over again. The party Hall should be held to have exhausted his rights before the Patent Office when

he on June 30, 1949, abandoned the Appeal before the Court of Customs and Patent Appeals and should not now at this late date be permitted to re-prosecute the same application based on identical drawings and an identical specification.

In accordance with Rule 232(c), this Motion is accompanied by a proposed amendment to the application of Wright here involved, cancelling claims forming the counts of this Interference, which amendment shall be entered by the Primary Examiner to the extent that the Motion is not denied, after the Interference is terminated.

An oral hearing is requested. [212]

This Motion is believed to be well founded in law and in fact and not interposed for the purpose of delay.

Respectfully submitted,

LYON & LYON,

By /s/ LEWIS E. LYON,
Attorneys for the Party Wright.

A copy of the foregoing Motion has this 4th day of August, 1950, been sent by registered mail to: Thomas E. Scofield, 2600 Fidelity Building, Kansas City, Missouri, attorney for the party Hall.

/s/ LEWIS E. LYON.

JBY:lf [213]

70/133

In the United States Patent Office

Division 49—Room 5092

Los Angeles 17, California

August 3 1950

Kenneth A. Wright,

Serial No. 777,640,

Filed October 3, 1947,

Sectional Well Scratcher.

AMENDMENT ACCOMPANYING MOTION TO DISSOLVE

Commissioner of Patents,
Washington 25, D. C.

Sir:

In accordance with the provisions of Rule 232(c), please cancel claims 26, 27 and 28. This amendment is to be entered only to the extent that the Motion to Dissolve attached hereto is not denied, after termination of Interference No. 84,411.

Respectfully submitted,

LYON & LYON,

By /s/ LEWIS E. LYON,
Attorneys for Applicant.

JBY:lf [214]

Div. 49, Room 5088 RLE/nq

Paper No. 25

(Copy)

Department of Commerce
United States Patent Office
Washington

Please find below a communication from the Examiner in charge of this application.

JOHN A. MARZALL,
Commissioner of Patents.

Division
Applicant:
Interference No. 84,411
Ser. No.

Filed:
For Hall vs. Wright.

Mailing date Dec. 15, 1950.

Lyon & Lyon,
811 West Seventh Street,
Los Angeles, California.

DECISION ON MOTIONS

The party Hall moves: (1) to shift the burden of proof relying on previous applications, and (2) to dissolve the interference on the grounds:

(a) that the counts are unpatentable to the party Wright in view of certain publications;

(b) that the party Wright is estopped to make the counts on the ground of laches.

The party Wright moves to dissolve the interference on the following grounds:

(a) that the counts recite incomplete combinations;

(b) that the party Hall is estopped to make the counts on the ground of laches;

(c) that the party Hall is estopped to make the counts in view of prior adjudications of previous Hall applications.

The common invention consists of a cylindrical collar or sleeve carrying resilient wires which scrape or abrade the bore of an oil well to remove the mud deposited by the drilling fluid prior to further treatment of the well as by cementing, etc. [215]

The collar is mounted loosely on a well casing in such manner as to rotate and move axially between longitudinally spaced stops or lugs welded to the outside of the casing. The wires extend in a generally tangentially manner to the collars and in the interfering cases, are inclined to the horizontal.

As the casing is moved up or down in the well, the wires on the collars engage the walls of the well, and as the resilient wires bend, they rotate the collar on the casing. The wires are thus caused to contact more of the well's side wall surfaces and greater cleaning or abrading action is obtained.

The counts of the interference are:

Count 1. In combination with a well casing, a support rotatably mounted on the exterior of said

casing, stiff wire whiskers each flexibly attached at one end to said support and each projecting from a point on the periphery of the support at an angular inclination having sidewise direction with respect to the radius of the support drawn to said projection point of the particular whisker, and all in substantially the same angular relation with the support.

Count 2. In well cleaning equipment, a casing reciprocable in the bore of a well, a support rotatably mounted on the exterior of said casing, stiff wire whiskers each flexibly attached at one end to said support, and each projecting from a point on the periphery of the support at an angular inclination having sidewise direction with respect to the radius of the support drawn to said projection point of the particular whisker and all in substantially the same angular relation with the support, the free ends of said whiskers being of a length to frictionally contact the well wall and abrade its surface upon reciprocation of the casing, said whiskers upwardly inclined on the downstroke and downwardly inclined on the upstroke of the casing and upon reversal of the casing travel adapted to fulcrum both at their points of contact with the well wall and substantially at their points of attachment with the support whereby vertical movement of the casing after each reversal rotates the support on the casing, thereby relieving bending stress on the whiskers and shifting the whiskers circumferentially upon the well bore to contact and abrade a different area upon each casing reciprocation. [216]

Hall's Motion to Shift the Burden of Proof

The party Hall moves to shift the burden of proof by relying on a previous application, now abandoned, Serial Number 388,891, filed April 16, 1941. Such application relates to a well scratcher on a casing having a plurality of wires mounted on a collar and extending sidewise to a radius. The scratcher is described as rotated on the casing.

The party Wright argues that the scratcher elements of the prior application No. 388,891 do not have "angular inclination having sidewise direction with respect to the radius of the support drawn to the projection point of the particular whisker." It is pointed out by the party Wright (paper No. 21) that the terms "angular inclination" and "sidewise direction" do not occur in the prior application Serial No. 388,891 and it is urged that the Board of Appeals in allowing the claims forming the interference held that the terms meant something more than non-radial. The refusal of the Board to allow a claim (claim 18 of Hall's application, 388,891) drawn to a non-radial whisker and the statement in the decision of the Board that:

> "Claims 23, 24 and 31, however, are each limited to a construction in which all the whiskers are not only at an angular inclination to the radius of the casing drawn to the projection point, but are at such an angular inclination having additionally a sidewise direction and requiring that the whiskers project in the same angular relation from the support."

is cited as supporting such interpretation. Claims 23, 24 and 31 formed the counts of this interference.

It is thought that the counts of the interference require only that the wire whiskers be inclined in a sidewise direction. The term "angular inclination having sidewise direction" in the counts is sufficiently broad to [217] cover the horizontally positioned wires of Serial No. 388,891 since they have sidewise direction, i.e., extend in a direction somewhat suggestive of a tangential manner.

The party Wright's contention that the counts of the interference also require that the whiskers have vertical inclination is not agreed to. It is true that the Board of Appeals refused to allow claims 18, etc., but when the decision is taken as a whole, it is thought that the claims the Board refused to allow were deemed by the Board to recite insufficient structure to cause rotation of the collar. The Board stated: "no invention would be involved in merely extending the whiskers at an angular inclination instead of radially as shown since the mere inclining of the whiskers at an angle would produce no beneficial function or result."

This is deemed to be an expression by the Board that claims reciting the whiskers as having only nonradial direction, i.e., lying in the same vertical plane as the attaching point but with upwardly or downwardly inclination, are not patentable. The further statement that claims 23, 24 and 25 (the counts of the interference) required whiskers having "such

an angular inclination having additionally a sidewise direction'' means merely that the inclination be in a sidewise direction.

Claim 18 which the party Wright relies upon to support his contentions, merely defines in terms of structure that the whiskers project ''non-radially,'' although the claim also contains functional recitations of the whiskers as being ''upwardly and sidewise inclined on the downstroke and downwardly and sidewise inclined on the upstroke of the [218] casing.'' The Board stated that claim 18 is so broadly drawn as to cover cases where the whiskers ''could extend in various directions'' and ''not perform any function of rotating the support.'' Apparently the distinction between allowed claims 23, 24 and 31 and rejected claim 18 was drawn on the recitation of sidewise inclining, the Board allowing claims 23, 24 and 31 with such structural limitation and refusing claim 18 which omits the term.

Each of the prior Hall applications, Serial Nos. 388,891 and 627,013, disclose well scratchers with whiskers having sidewise inclination. The motion to shift the burden of proof by Hall is accordingly granted.

Hall's Motion to Dissolve

The party Hall has moved to dissolve the interference for the reason that the counts are unpatentable to the party Wright in view of the following publications:

''Oil Weekly'' Magazine of July 7, 1941, pg. 37.

"The Oil and Gas Journal" of Sept. 11, 1941, pg. 65.

"The Oil and Gas Journal" of Dec. 25, 1941, pgs. 258 and 259.

"The Oil and Gas Journal" of April 30, 1942, pg. 36.

"Petroleum Engineer" of July 1, 1946, pgs. 114, 116, 118, 121, 124, 127, 128 and 131.

"Petroleum Engineer" of July 1, 1946, pg. 115.

The first publication above is an advertisement of the Weatherford Spring Co., showing "Acme Wall Cleaning Scratchers" for wells. The picture thereof shows a collar with two rows of wire whiskers. Each wire extends in a sidewise direction to its point of attachment to the collar. [219] The wires are also shown as inclined upwardly and downwardly. The upper row of whiskers is downwardly inclined and the lower row is upwardly inclined. As shown, the wires are sufficiently long that they cross each other.

The installing directions in the advertisement state that the bands should be placed over the joints at desired locations and that lugs should be welded above and below the bands approximately twelve inches apart. Since the steel bands are two and one-half inches in width, the bands would slide on the pipe, and due to the sidewise inclination of whiskers, the collar would be rotated on the casing.

Such publication appears to be an anticipation

of the interference counts, and since it was published on July 7, 1941, more than one year prior to the filing date, Oct. 3, 1947, of the party Wright's application, the motion to dissolve the interference is granted. The publication is not a reference for the party Hall because Hall is held to be entitled to the filing date of his earlier application Serial No. 388,891, filed April 16, 1941.

The second publication listed above is also an advertisement of the Weatherford Spring Co., published on Sept. 11, 1941. It shows two pictures of scratchers having collars with wire scratchers inclined sidewise and upwardly and downwardly. The advertisement states definitely that when running in "you get a rotating reversing action." This publication also is held an anticipation of the interference counts. The other publications cited show cleaning collars with sidewise inclined whiskers and are also held anticipatory as to the party [220] Wright.

A further motion by the party Hall that the claims are unpatentable to Wright by reason of laches is denied. The Wright application had more limited claims than those of the interference but the claims of the application are drawn to a well cleaner of the general character claimed in the interference counts.

The motion by the party Hall to dissolve the interference on the grounds that the counts are unpatentable to the party Wright in view of the prior art publications is granted.

Wright's Motion to Dissolve

The party Wright moves to dissolve the interference for several reasons. First, it is urged that the counts are incomplete since the stops above and below the cleaner are not recited in the claims. The use of stops such as couplings of adjacent pipe sections (La Velle patent 1,773,398, dated Aug. 19, 1930) or of welded stop means (Steps, et al., patent 1,775,376, dated Sept. 9, 1930) for movable elements on well tubing is common. In view thereof, it is held that a person skilled in the art could provide stop means on the well tubing to render the device operative.

Further, these claims reciting the casing and collar define articles of commerce constituting subcombinations of the assembled organizations. The pipe or casing might well be bought from a different manufacturer than the one supplying the cleaner. Claims reciting commercial articles such as blanks, etc., are allowed even though subsequent work or material is added thereto to make the finished product. [221]

Secondly, the party Wright urges that the party Hall is estopped on the ground of laches. It is true that the claims corresponding to the interference counts, were not presented by the party Hall until Oct. 27, 1949, more than eight years after the publication of the advertisments in "The Oil Weekly" of July 7, 1941, and "The Oil and Gas Journal" of Sept. 11, 1941.

However, the applications of Hall disclose that such party continuously presented and urged claims to the well scratcher. Hall application Serial No. 388,891, filed April 16, 1941, contained claims such as claim 4 to the cleaner reciting the scratching elements as "normally inclined relative to radii of the well string." When such application was abandoned, the continuing application Serial No. 627,013 presented claims to the subject matter of the collar and its wire scratchers and the application now in this interference had original claims drawn broadly to a support with non-radial wire whiskers. Since the party Hall has continuously claimed the general subject matter of the interference, the decision of Muncie Gear Works, Inc., v. Outboard Marine & Mfg. Co., 315 U. S. 759, 1942 C.D. 761, is not deemed to be controlling. The acts of the party Hall do not constitute an abandonment of the invention.

Thirdly, the party Wright urges that the party Hall is estopped because prior application Serial No. 627,013 was prosecuted to final action before the Patent Office and abandoned after appeal to the Court of Customs and Patent Appeals. The doctrine of res adjudicata is not believed to be applicable where, as in this case, claims, more limited than the appealed claims were present in the continuing application, and the parent case with its broader claims was abandoned when the more limited claims of the continuing [222] application were allowed. The allowed claims of Serial No. 55,619 recite the whiskers as "at an angular inclination having sidewise

direction'' while the claims of Serial No. 627,013 recited the wires as resilient and substantially tangentially, etc.

Summary

The party Hall's motion to shift the burden of proof is granted.

The party Hall's motion to dissolve the interference as to the counts being unpatentable to the party Wright is granted.

The party Hall's motion to dissolve the interference for the reason that the party Wright is estopped is denied.

The party Wright's motion to dissolve the interference because the counts recite incomplete combinations is denied.

The party Wright's motion to dissolve the interference on the ground of laches is denied.

The party Wright's motion to dissolve the interference in view of prior adjudications of Hall application 627,013 is denied.

Time limit for request for reconsideration of this decision, Twenty days from the date of mailing, Rule 244 c.

No appeal, Rule 244 d.

EXAMINER, DIV. 49. [223]

In the United States Patent Office
Before the Primary Examiner

Interference 84,411

KENNETH A. WRIGHT

vs.

JESSE E. HALL.

REQUEST FOR RECONSIDERATION

The party Wright hereby requests the Examiner to reconsider the holding made in his Decision on Motions, dated December 15, 1950, which are based on the following grounds:

(a) That res adjudicata does not apply against the party Hall; and

(b) that the counts are patentable to Hall on the basis of Hall's parent application.

Res Adjudicata

In view of the Examiner's holding, in agreement with Hall's contention in his Motion to Shift the Burden of Proof, that the counts are supported by Hall's first application, it now becomes evident that Hall's abandonment of his first application No. 388,891 after relinquishing claims for the same invention as that in issue in the interference, requires the rejection of Hall's third application S. N. 53,619 on the ground of res judicata.

Hall's first application was filed on April 16, 1941, and was allowed by Hall to become abandoned on

November 8, 1945, after all its claims except one had been finally rejected by the [224] Examiner. The one claim 19, which was allowed, is for a detail of construction which is not involved in the interference and is not shown by Wright.

It is quite evident from the history of the prosecution of Hall's first application that the invention on which he was seeking a patent was the very invention he is seeking to recapture in the counts of the interference, presented long after he had abandoned his first and second applications.

In the specification of his first application, on page 4, lines 11-13, and on page 5, lines 23-25, Hall described the scratching elements as "inclined rearwardly with relation to the direction of rotation of the well string." This is, of course, the same disposition as the Examiner has given by way of interpretation to the "angular inclination having sidewise direction" recited in the counts of the interference.

The operation of the scratcher, including rotation of the sleeve due to the rearward inclination of the scratching elements, is described on page 7 of S. N. 388,891, as follows:

> "When the scratcher is shifted downwardly in a well bore its elements 2 are thus fulcrumed at the coils 2a and are swung upwardly (and rearwardly due to their inclined position with relation to the direction of arrow A), so as to conform to and press against the wall of the sur-

rounding well bore for abrasive engagement therewith, without distortion along the lengths of the scratching elements such as might break or permanently bend the same. In similar manner, when the scratcher is shifted upwardly in the well bore the scratching elements engage the formation at an angle, due to their combined circumferential and axial inclination, permitting swinging of the scratching elements and/or rotation of the scratcher on the well string 3, in direction for such yielding of the contact [225] of the scratching elements with the surrounding formation as is necessary to prevent them gouging into the formation with consequent possibility of breakage or permanent distortion of the scratching elements, while at the same time maintaining such tensioned contact as will insure abrasive engagement with the formation." (Underscoring ours.)

Claim 20 of S. N. 388,891 and similar claims were rejected by the Examiner under date of September 17, 1942, Paper No. 6, on prior art, including the rejection of Claim 20 on the ground that it is readable on the patent to Crawford No. 2,248,160. Claim 20 read as follows at the time it was cancelled following repeated rejections as unpatentable over prior art:

"20. In a well bore scratcher, a sleeve mountable on a well string for rotation thereon, a plurality of scratching elements mounted on the sleeve and having free ends projecting out-

wardly therefrom and inclined relative to radii of the sleeve and free to flex relative thereto."

The amendment adding claim 20 contained the following argument in support thereof:

> "Claim 20 includes the limitation of the scratching element being inclined. The combination of the rotatable sleeve and inclined scratching elements insures the scratching elements conforming to the contour of the well bore and also insures uniformly distributed scratching engagement." (Underscoring ours.)

It is obvious from this argument that it was understood and intended that the limitation in claim 20 of the scratching elements being "inclined relative to radii of the sleeve" meant the rearward inclination referred to in the specification, and which the Examiner now interprets as "angular [226] inclination having sidewise direction."

It will be seen that this claim is for the same combination as that covered by the counts of the interference, i.e., it calls for a sleeve rotatably mounted on the well casing and having scratching elements mounted on the sleeve and inclined relative to radii of the sleeve. The only inclination shown in application S. N. 388,891 is rearward, and the Examiner now holds this to be "sidewise direction" and this is the only kind of inclination which would operate to cause the sleeve to rotate as Hall described.

In the next amendment, dated Dec. 12, 1942, reconsideration was urged as follows:

"Claim 20 is limited to scratching elements having free ends projecting outwardly from a rotatable seleeve and inclined relative to radii of the sleeve. In Crawford, there are no scratching elements having outwardly projecting ends." (Underscoring ours.)

The Examiner continued the rejection of claims including claim 20 in the next office action dated June 23, 1943, in view of the Maher patent No. 2,-101,007.

The Patent Office thereafter suggested to Hall four counts from a then pending application of petitioner, Kenneth A. Wright, which included the folling two counts:

"In well production equipment, a casing to be permanently set in the well, a sleeve on the casing, and a plurality of spring fingers spaced around the cricumference of the sleeve and projecting outwardly from the sleeve to engage the wall of the well.

"In combination, a well casing to be permanently set in a well, a sleeve secured on the casing, and a plurality of spring fingers secured to the sleeve and projecting substantially horizontally therefrom to engage the wall of the well." [227]

These proposed counts were made by Hall who continued to assert other claims including claim 20 after amendment requiring the scratching elements

to be free to flex, with the following argument, Paper No. 10, page 4:

> "Claim 20 has been amended to patentably distinguish from Maher, the claim being limited to scratching elements which are free to flex."

Thereafter Interference No. 81,240 was formally declared on November 30, 1945, including the above-quoted counts as counts 3 and 4.

The interference terminated by a concession of priority from Hall to Wright based upon an agreement between the parties, dated September 15, 1944, which is recorded in the Assignment, Division of the Patent Office in Liber 0-200, page 479. Following the termination of the interference, claims including claim 20 aforesaid were continued to be rejected by the Examiner as follows (Office action of Oct. 17, 1944):

> "Claims 5, 9, and 12 to 27 are rejected as defining nothing patentable over the disclosure of the application of Wright as to which applicant has conceded priority. These claims cover only colorable variations of the structure of Wright."

An argument for reconsideration was thereupon filed under date of April 14, 1945, but claims including claim 20 were not argued or cancelled, and the Examiner called that fact to Hall's attention in a letter dated April 14, 1945, Paper No. 23. Claim 20 and other claims were thereupon deliberately

cancelled, in view of the rejection on prior art, by an amendment filed April 19, 1945.

Claims 8, 14, 15, 25 and 26 (some of which include the [228] feature of the collar being rotatable on the casing, see for example claims 5 and 14) were thereupon rejected by the Examiner in the Office action of May 8, 1945, as follows:

> "Claims 8, 14, 15, 25 and 26 are rejected as defining nothing patentable over the issue of Interference No. 81,240 in which Wright S. N. 369,389 was involved with this application and which interference was decided adversely to applicant. The Wright application has matured into patent No. 2,374,317, cited at the head of this letter. Crawford and Maher of record show it old to rotatably mount on a pipe elements for scratching the well bore wall. Black, et al., of record, shows it old to mount a scratcher wire coiled intermediate its ends on a body for reciprocation and rotation within a well bore."

The case was finally rejected on May 8, 1945. Only claim 19, which is unimportant to the present contest, was allowed.

No appeal was taken and application S. N. 388,891 became abandoned on November 8, 1945.

As stated, claim 20, for example, which was abandoned by Hall is for exactly the same scratcher as the interference counts, as will be at once appreciated from the following comparison:

Claim 20

In a well bore scratcher, a sleeve mountable on a well string for rotation thereon,

a plurality of scratching elements mounted on the sleeve

and having free ends projecting outwardly therefrom and inclined relative to radii of the sleeve

and free to flex relative thereto.

Count 3

A well bore cleaning scratcher adapted to be rotatably mounted on a well casing comprising an annular support,

stiff wire whiskers, each flexibly attached at one end to said support

and each projecting from a point on the periphery of the support at an angular inclination having sidewise direction with respect to the radius drawn to said projection point of the particular whisker [229]

and all of said whiskers projecting in substantially the same angular relation from said support.

It will be seen that these claims, that is, claim 20 and count 3 of the interference, are for the same combination. Both call for a sleeve mountable upon a well casing and having scratcher elements mounted on the sleeve and inclined relative to the radii of the sleeve. The language in claim 20, "inclined relative to radii on the sleeve," was mutually understood to mean the same as the language in count 3 of the interference setting forth that the scratching elements are "at an angular inclination having sidewise direction with respect to the radius of the support," as now interpreted by the Examiner. Sidewise is the only inclination which is disclosed in Hall's first application and is the particular kind of inclination which would be required to cause the sleeve to rotate on the casing, as Hall has described it. It is perfectly clear from Hall's arguments quoted hereinbefore, that claim 20 was intended and understood, by both the Patent Office and Hall, to define such an inclination as would produce rotation, i.e., an angular inclination having rearward or so-called sidewise direction. Otherwise, the very function ascribed to the invention as argued by Hall and defined in claim 20, would not result, i.e., the function of rotating the sleeve upon reciprocation of the casing. [230]

Not only count 3 but also counts 1 and 2 are for the same invention as claim 20 of Hall's first application. Count 1 differs from count 3 merely in reciting that the support is "rotatably mounted" on the casing instead of "adapted to be rotatably mounted" on the casing. This slight difference in

form is of no importance since it is obvious that in essence the claims are the same. Count 2 merely adds to count 1 certain statements of function of the structure recited in Count 1 and is therefore for the same invention as Counts 1 and 3.

The difference between the counts on the one hand and Claim 20 on the other hand, represents, therefore, a mere variant of expression of the same concept.

Exactly two days (Nov. 6, 1945) before S. N. 388,891 became abandoned, Hall filed an alleged continuation-in-part application S. N. 627,013. That application is based upon an entirely different well scratcher from that disclosed in S. N. 388,891, i.e., a scratcher in which the whiskers 14 are substantially tangential to the sleeve "and are secured to the sleeve by studs, etc.," as distinguished from Hall's first case in which the whiskers 2 are on an angle of about 60° from a tangential to the sleeve 1 and the inner ends of the whiskers are offset at 2^b and 2^c and held by abutments 10 and an inner collar 6. Hall carried over into the new case, as Fig. 3, only a fragmentary portion of Fig. 1 of the old case. The identity of the well scratcher disclosed in the parent application was thus effectively obliterated, and it remained obliterated when Hall filed the instant application S. N. 55,619, as a [231] continuation of S. N. 627,013.

Application S. N. 627,013, of course, was filed subsequent to the execution of an agreement, here-

inafter discussed, under which title to Hall S. N. 388,891 passed to Wright. Hall knew when he filed that application that he had already assigned his rights to any and all claims reading on S. N. 388,-891, to Wright, and he, therefore, started anew and intentionally restricted all of the original Claims 1 to 6 presented in application S. N. 627,-013 to non-common subject matter, that is to say, claims limited to "whiskers projecting at an angle from the sleeve simulating the trajectory of bodies thrown from the sleeve were the sleeve rotated rapidly" (which is just a verbose and prolix way of saying "substantially tangentially" as the claims were later amended to recite), the connection of the inner ends of the whiskers to the sleeve by studs, the split collar, etc., none of which features are disclosed in application S. N. 388,891 and, therefore, are not readable thereon.

Hall described the substantially tangential whiskers as an unusual arrangement * * *

> "which produces rotation of the collar and migration of the ends of the wires about the well bore upon reciprocation of the casing." (S. N. 627,013, page 4.)

This new application also asserted that * * *

> "This action results in a much more effective cleaning of the well bore." (P. 4, last 2 lines.)

In other words, the entire tenor of S. N. 627,013 was such as to lay heavy stress upon the differences between the later [232] developed tangential struc-

ture and the old non-tangential structure upon which S. N. 388,891 was based and the alleged improved cleaning operation resulting from the tangential disposition of the whiskers. Accordingly, the second filed application, S. N. 627,013, was not a continuation-in-part case of the first application. Its specification, claims and oath,* constituting the "application" were limited completely to an alleged improvement over the first case, i.e., the improvement relating to the tangential whiskers. Hall's second application was therefore not an application for a patent on the same invention as that of his first application, and hence was not a continuation of the first application in any sense. It related to a different invention. The second case therefore is a legal nonentity insofar as being competent to bridge the hiatus between the first Hall case and the third Hall case, involved in this interference:

In this situation, therefore, Hall is not entitled to relate his third application back to his first application. See Lindsay v. Stein, 10 Fed. 907, and Weir v. Morden, 21 Fed. 243.

It has been definitely ruled by the Board, which ruling has not been challenged by Hall, that Hall's first case, S. N. 388,891, does not disclose the tangential arrangement of the whiskers (Board's decision, S. N. 55,619, Paper No. 25, page 5): [233]

---

*The oath filed set forth only the lack of bars from the filing of the second case; it did not tie in the allegations relative to common patentable subject matter of the two cases. It was, therefore, a completely new application.

> "* * * Application S. N. 388,891, on the other hand, does not disclose whiskers arranged substantially tangentially but instead discloses them arranged at a materially different angle. * * *"

Thus, Hall deliberately and intentionally abandoned claims to any common subject matter existing between his parent case and his continuation-in-part case. Thus, claims to the interference subject matter, earlier asserted and surrendered in Hall's first case, were deliberately abandoned when his second case (S. N. 627,013) was filed, all of which claims were limited by their wording to the substantially tangential arrangement of the whiskers.

Instead of cancelling Claim 20 and deliberately abandoning the first application, Hall could have continued the prosecution of Claim 20 in S. N. 627,013 and could have inserted the claims which are now in the interference subject, of course, to a rejection by the Examiner on res judicata. Because of his failure to do so, his right to a patent on the interfering claims became res adjudicata.

After acquiescing in the rejection of Claim 20, and just two days before allowing his first application to become abandoned, Hall filed his second application on November 6, 1945, as an alleged continuation-in-part of his first application.

The tenor of this second Hall application dealt with an alleged improvement in which the whiskers are disposed substantially tangentially to the sleeve on which they are mounted as contra-distinguished

from the disclosure of Hall's first case wherein the whiskers were disposed at an angle of about 60° from tangential. [234]

Each of Hall's original Claims 1 to 6 in his second application recited the rotatable sleeve and whiskers extending substantially tangentially therefrom and recited specific details of the attachment of the whiskers to the sleeve which details are not shown by Wright. Thus, Hall deliberately and intentionally elected not to continue the prosecution of claims he had abandoned in his first case and which would have been generic to either the tangential arrangement disclosed in his second case or the non-tangential arrangement shown in his first case.

Some of Hall's specific claims of his second application S. N. 627,013 were allowed, including five of his six original claims, after amendment to define the whiskers as "projecting substantially tangentially." Hall must have known that these claims were unpatentable, because of his own prior sales and publications which were statutory bars. Other broader claims, including Claim 14, limited to substantially tangential whiskers, were finally rejected and Hall appealed to the Board. The Board allowed two claims (9 and 10) of the appealed claims and affirmed the rejection of the remaining five claims (11, 12, 13, 14 and 16). Hall appealed to the U. S. Court of Customs and Patent Appeals on June 24, 1948, and on his own motion his appeal was dismissed by the Court on October 4, 1949. However, prior to such dismissal, Hall expressly abandoned his second application on July 3, 1949 (See Paper

No. 26, S. N. 627,013). Such express abandonment occurred prior to the Board's decision on January 30, 1950, in Hall S. N. 53,619, allowing Claims 23, 24 and 31 corresponding to the present interference counts. [235]

By failing to present the interfering claims or claims to equivalent subject matter in his second application, as Hall could have done subject, of course, to a rejection by the Examiner on res judicata, the intent to abandon claims to common subject matter and to make a new application only to non-common subject matter is made quite clear, and by expressly abandoning that application after it had been appealed to the Court, Hall again became estopped to prosecute the subject matter of the interfering counts and his right thereto became again barred by res judicata.

The following old maxim of law is clearly applicable:

> "He who will not when he may,
> When he will, he shall have nay."

Indeed, some of the claims which Hall lost before the Board in S. N. 627,013 and upon which he appealed to the C.C.P.A., were in practical reality even more limited than those which he asserted in his third case, S. N. 55,619, and which the Board allowed, and which now constitute the interference counts. For the convenience of the Examiner, we quote below a typical claim, lost and surrendered in Hall's second case, as compared with a typical count of the interference:

Claim 14—S. N. 627,013

A well bore cleaning scratcher, comprising

a perforate support member mounted on the exterior of a well string and spaced therefrom,

wire whiskers extending outwardly through the perforations in said member and fixedly attached at their

inner ends to the side of said member facing the well string, coils formed in the wire whiskers imparting resiliency to the mounting thereof, said coils interposed in the wires between their fastened and free ends and located substantially where they pass through the holes in the support member,

said whiskers projecting substantially tangentially from the well string.

Count 1—Intf. 84,411

In combination with a well casing,

a support rotatably mounted on the exterior of said casing,

stiff wire whiskers each flexibly attached at one end to said suport and each projecting from a point on the [236]

periphery of the support at an angular inclination having sidewise direction with respect to the radius of the support drawn to said projection point of the particular whisker, and all in substantially the same

Abandoned Claim 14 is directed to the same combination of a well bore cleaning scratcher and a well string (well casing) as Count 1, inasmuch as Claim 14 requires the perforated support member of the scratcher to be mounted "on the exterior of the well string." Also, the scratcher of Claim 14 is required to be rotatable on the well string whether the word rotatable appears or not in the claim, for the reason that the claim requires the perforate support member (sleeve) to be mounted on the exterior of the well string and spaced therefrom. The support could not be mounted on the well string and be spaced therefrom without being rotatable on the well string.

Furthermore, Claim 14 is much more limited than Count 1 in requiring the wire whiskers to project "substantially tangentially"; whereas, Count 1 is much broader and merely defines the wire whiskers as having "angular inclination having [237] sidewise direction." This expression has been held by the Examiner to read on Hall's first case (S. N. 388,891) in which the whiskers are about 60° from the tangential, so that there is no question but what Count 1 is broader than Claim 14, which Hall deliberately abandoned by failing to prosecute his appeal to the Court of Customs and Patent Appeals in S. N. 627,013.

Claim 14 is also obviously more limited than Count 1 because of its recitation of "coils formed in the wire whiskers * * *" and which coils are not recited in Count 1.

Count 2 differs from Count 1 only in the recitation of functional statements and falls in the same category as Claim 1, insofar as res judicata is concerned. While it is true that Count 2 includes lengthy functional statements not recited in Count 1, there is no difference in structural limitations and Count 2 is not narrower in any respects than Count 1.

Since Count 2 differs from Count 1 only by statements of function, it is obviously unpatentable thereover (see in re Randell, 1934 C.D. 121).

As to Count 3, this Count is even broader than Count 1 in that it does not include a well casing. Otherwise, Count 3 is a substantial duplicate of Count 1 and is subject to the rejection on res judicata for the same reasons.

The Examiner's comments on page 8 of his decision on Motions setting forth that the doctrine of res judicata is not applicable because, [238]

> "claims, more limited than the appealed claims were present in the continuing application (S. N. 55,619), and parent case (S. N. 627,013) with its broader claims was abandoned when the more limited claims of the continuing application (S. N. 55,619) were allowed." (Serial number insertions ours.)

is clearly erroneous because the exact opposite is true, Claim 14, for example, of S. N. 627,013 is much narrower than any of the interference counts. Moreover, it is clear that the support member re-

cited in Claim 14 and the mounting of the tangential whiskers were intended to secure rotatability upon reciprocation as is clear from the arguments advanced to the Patent Office by Hall in his brief on appeal as follows:

> "When cleaning a well bore with scratchers with the wires projecting tangentially from the surface of the anchoring collar the free ends of the whiskers contact the wall of the well and upon reciprocation of the casing the wires are caused to fulcrum at the coils. With the coils acting as fulcrums and the free ends pivoted on the wall of the well, by frictional contact reciprocation of the casing causes the abrading wires to walk around the inner surface of the well bore rotating the anchoring sleeve upon the casing. * * *" (Emphasis ours.)

While this statement clearly shows an intent on Hall's part to define a rotatable structure, the argument is otherwise, in some respects, inaccurate because the rotation of the anchoring sleeve on the casing is not caused by the abrading wires walking around the inner surface of the well.

Thus, it will be clear that the claims lost before the Board in the second case (S. N. 627,013) were clearly more limited in every respect than the interference counts. [239]

The doctrine of res judicata, therefore, clearly applies because, certainly, the Patent Office is without jurisdiction to entertain claims broader than

those which were appealed in S. N. 627,013 to the C.C.P.A.

Meanwhile, Hall had filed his third application, S. N. 55,619, which is stated by Hall to be a continuation of his second application, on October 20, 1948—five months after the adverse decision of the Board in the second case. In this third application Hall presented only the following as original claims:

"1. A well bore cleaning scratcher comprising a support mounted on the exterior of a well string, and universally flexible wire whiskers carried by said support and projecting non-radially outward from the well string.

"2. A well bore cleaning scratcher comprising a support mounted on the exterior of a well string, resilient wire whiskers secured to said support with their free ends projecting outwardly therefrom, each whisker in its unrestrained condition being non-radial to said well string and the free end thereof being displaceable in any lateral direction relative the position it occupies when in unrestrained condition.

"3. A well bore cleaning scratcher comprising a collar encircling the exterior of a well string, resilient wire whiskers secured to said collar with their free ends projecting outwardly therefrom, each whisker in its unrestrained condition being non-radial to the collar.

"4. A well bore cleaning scratcher as in Claim 3, wherein said collar is rotatable relative the well string."

Significantly, Hall did not include any of the claims which then stood allowed in his second case which were clearly limited to the tangential arrangement of the wire whiskers. [240]

We can only surmise why these allowed claims to the tangential arrangement of the whiskers were not carried over to the third case before the abandonment of the second case. It may well be that Hall was cognizant of the fact that these claims, unless he could sustain their readability on his first case, which he obviously could not, were barred by his own publications dated at least four years before the second case was filed.

In this dilemma, Hall couched each of his original claims in the third case to the non-radial disposition of the whiskers so that they were generic to either the disclosure of the first case or the second case—in other words, they were sufficiently adequate to cover the tangential arrangement. Claim 4 was, moreover, drawn to the combination of the non-radial whiskers plus the rotatability of the sleeve. Thus, Hall, on October 20, 1948, sought to reprosecute generic claims of precisely the same scope as those which had been finally rejected and abandoned in his first case, the history of which has been heretofore discussed.

In the oath accompanying the third case, in an apparent effort to limit the oath to the first case,

in view of the statutory bars, Hall changed the standard language of the oath by stating, "Or more than one year prior to the effective date of this application."

The Examiner, however, rejected these generic claims for some of the same reasons and on some of the same art as had [241] been applied against corresponding claims rejected in his first case, and abandoned following the final rejection. The date of this action was December 9, 1948. Hall thereupon cancelled these generic claims and reasserted claims to the tangential arrangement as follows:

> "5. In combination with a well casing, a support mounted on the exterior of said casing, stiff flexible wire whiskers, each attached at one end to said support, the free ends of said whiskers projecting outwardly from the periphery of the support and substantially tangentially thereto.
>
> "6. In combination with a well casing, a support rotatively mounted on the exterior of said casing, stiff flexible wire whiskers, each attached at one end to said support, the free ends of said whiskers projecting outwardly from the periphery of the support and substantially tangentially thereto."

Claims to the tangential arrangement of the whiskers were continued to be asserted until, as a result of a protest filed by Wright, the Patent Office became informed of Hall's own publications in the Oil Weekly, July 7, 1941, page 37, and Oil and Gas

Journal, September 11, 1941, page 65, which constituted statutory bars as against the filing date (Nov. 6, 1945) of the Hall second case, S. N. 627,-013.

In Paper No. 18, the Examiner rendered a rejection of the claims, citing Hall's publications of his own device in Oil and Gas Journal of Sept. 11, 1941, page 65, and Oil Weekly, July 7, 1941, page 37, and made a definite ruling that Hall was not entitled to the filing date of his parent case. Immediately thereafter, Hall, recognizing the dilemma in [242] which he had been placed by the Examiner, filed an amendment which sought to eliminate the feature of tangentiality which had been theretofore so strongly urged in both the second (S. N. 627,013) and third (S. N. 55,619) cases. He had asserted broad claims (1 to 4) not limited to tangential whiskers when the third case was originally filed, and thereafter, upon rejection, surrendered these claims in favor of claims to the tangential arrangement (Claims 5 and 6), and later dropped these for claims not reciting tangential whiskers and reverted back still once more to claims purporting to read upon the old case.

Thus, on October 27, 1949 (Paper No. 19), we find Hall presenting claims to the same subject matter he had abandoned in his finally rejected parent case —after a period of five years. This was also a period of two years after the final rejection of his application (S. N. 627,013).

A more aggravating case of compound res

judicata and vacillation is difficult to imagine. Almost a decade has now elapsed since the first Hall case, S. N. 388,891, was filed on April 16, 1941.

As to the question of res judicata the Examiner said in his decision on motions:

> "Thirdly, the party Wright urges that the party Hall is estopped because prior application, Serial No. 627,013, was prosecuted to final action before the Patent Office and abandoned after appeal to the Court of Customs and Patent Appeals. The doctrine of res judicata is not believed to be applicable where, as in this case, claims, more limited than the appealed claims were present in the continuing application, and the parent case with its broader claims was abandoned when the more limited claims of the continuing application were allowed. The allowed claims of Serial No. 55,619 recite the whiskers as 'at an angular inclination having sidewise direction' while the claims of Serial No. 627,013 recited [243] the wires as resilient and substantially tangentially, etc." (Underscoring ours.)

This statement appears to be inaccurate. The interfering claims in Hall's third application are actually broader than the claims appealed in his second application, which were limited to whiskers having coils and/or extending substantially tangentially of the sleeve. The counts in issue do not recite coils and are not limited to a tangential arrangement of the whiskers, as has been pointed out

hereinbefore in comparing the counts with abandoned Claim 14 of S. N. 627,013. The interfering claims recite the whiskers as being "at an angular inclination having sidewise direction." This language is much broader and not more limited than the expression, "substantially tangential."

It is submitted, therefore, that the Examiner was in error in stating that the claims allowed in the third application are "more limited" than the appealed claims of the second application.

In conclusion, it is submitted that Hall's right to a patent on the interfering claims became res judicata against him on two occasions, to wit: First, when he failed to insert and prosecute the interfering claims in his first application and abandoned his first application after cancelling Claim 20; and, second, when he failed to insert and prosecute the interfering claims in his second application and abandoned it after appealing to the C.C.P.A.

The fact that this ground of rejection was not presented to or applied by the Board of Appeals does not bind the Examiner, since this is an inter partes proceeding and since this is a new ground of rejection never presented to or considered by the Board. [244]

Authorities on Res Judicata

The question whether an applicant for patent who has been denied a patent on one application may file a second application for the same invention and demand a re-examination of his right to a patent,

has received the attention of the courts in many cases, and the courts have uniformly ruled that the second application may properly be rejected on the ground of res judicata. This is true regardless of whether the applicant stopped prosecuting his first application after a final rejection by the Examiner, or after appealing to the Board of Appeals or to the Court.

Some earlier decisions are to the effect that the Patent Office may or may not, as it sees fit, use this ground of rejection of a second application. Later decisions clearly make it the duty of the Office to use such a rejection where it is applicable.

One of the earlier decisions directly in point was that of the Court of Appeals for the District of Columbia in Barratt v. Duell (Comm'r of Patents), 14 App. D. C. 255, 1899 C. D. 320.

In that case the applicant, after being refused a patent by the Patent Office and losing an appeal to the Court, failed to file a bill in equity under Sec. 4918 R.S. as he could have done under the then existing law. Instead he filed a co-pending second application with simplified disclosure of the same invention. It was rejected by the Patent Office on the [245] ground of res judicata.

On appeal the Court said:

"When in a court of law there has been one investigation and thereupon one adjudication, such action becomes final and can only be reviewed, if at all, by way of appeal. No subsequent suit for

the same subject matter and between the same parties can be sustained. What good ground is there for any different course of procedure in the Patent Office? When an application for a patent has been considered and allowed and the patent has been issued, there can be no question whatever of the finality of such action. The right of the patentee can never thereafter be questioned in the Patent Office, except to the limited extent specially authorized in cases of interference. When, on the other hand, an application for a patent is after due examination rejected and finally determined against the applicant after exhaustion of the manifold right of appeal allowed to him by the great liberality of the patent laws, why should a second application be allowed or entertained? Is there any reason why the determination of the matter should not be regarded as conclusive? If a second application could be regarded as proper, why not ten or twenty successive applications? Where are the applications to stop, and what would become of the public business if it were in the power of one person to obstruct the operations of the Patent Office by repeated and persistent applications? These questions answer themselves. Renewed applications are authorized by the patent law under special circumstances in the place of abandoned and forfeited applications; but these are analogous to proceedings at common law to reinstate cases that have been dismissed on technical grounds. But there is no provision of law for a second application where a previ-

ous application has been adjudicated and a patent denied. The absence of such a provision is sufficient evidence that the right to have a second application considered after refusal of a patent upon a previous application does not exist, especially when the fact is recalled that the law in its very great liberality provides still another method for the applicant to establish his claim by the way of a bill in equity. [246]

"The force of this position is appreciated by counsel for the applicant who seeks to sustain the course here pursued upon the theory that the new application is substantially different from the previous one and that it is made in compliance with the spirit, if not with the letter, of the opinion of this court in the former case. That opinion suggested to the applicant to file a bill in equity, as he was authorized by law to do, not a new application, for which there is no warrant in law. The new application does not make a different case. The case is the same precise case. The subject-matter of the invention is the same. The claim is the same. Only the specifications and drawings are more full, and the state of the art at the time of the alleged invention is more fully and satisfactorily shown. But all this, which might well have been adduced by way of amendment or otherwise in the original proceeding or which might have been shown under a bill in equity, at the utmost amounts to no more than a clearer and better declaration of additional proof of the alleged invention. It does not make any new

case, and it does not justify the filing of any new application."

The situation was much the same in In re Edison, 30 App. D.C., 321, 1908 C.D. 327, except that the applicant filed no appeal to the Court from the refusal of a patent by the Patent Office on his first application, but filed a second application co-pending with the first, but with claims differing in phraseology.

The court affirmed the rejection of the second application on the ground of res judicata, citing Barratt v. Duell, supra.

In In re Marconi, 38 App. D.C. 286, 1912 C.D. 483, Marconi had lost an interference with Babcock and thereafter he applied for a reissue of an earlier patent not involved in the interference, and sought claims broader than those which were in the interference. The Court in affirming a rejection on, res [247] judicata, said:

> "We think that the Commissioner was right in deciding that he was concluded by the former decision. There should be an end of litigation in the Patent Office as elsewhere and the principle of res judicata is applied therein to its full extent." (Emphasis supplied.)

In Lavin v. Pierotti, 29 C.C.P.A. 1233, 1942 C.D. 679, Pierotti's first application had been finally rejected by the Examiner on the ground that its disclosure was inoperative. Then Pierotti filed a second application co-pending with the first and

having a better disclosure. In the interference involving his second application, Pierotti relied on his first application as a constructive reduction to practice. The Primary Examiner in a decision on motions denied Pierotti the benefit of his first application on the ground that, since no appeal was taken from the final rejection, the question of operativeness was res judicata. The Board, reversing the Examiner, held that it was not. The Court, however, said:

> "The final decision of the Primary Examiner in the ex parte prosecution of appellee's earlier filed patent application was obviously judicial in character, and, as no appeal was taken therefrom, it became final and conclusive not only against appellee but also against the Board of Appeals as to the issue—the operativeness of appellee's disclosure—therein determined."

A decision clearly binding upon the Patent Office was recently rendered by the U. S. Court of Appeals for the District of Columbia, Hemphill v. Coe (Comm. of Pats.), 1941 C.D. 36, 49 U.S.P.Q. 484, and holds that: [248]

> "A party therefore by filing a second application cannot obtain a review of questions which were, or might have been, determined on a review relating to the first."

The fact that the interfering claims 23, 24 and 31 of Hall's third application, S.N. 55,619, are not in words just the same as claim 20 of his abandoned

first application, S.N. 388,891, or the claims of his abandoned second application, S.N. 627,013, claim 14, for example, does not avoid the doctrine of res judicata.

Such was the situation in In re Ellis, 24 C.C.P.A. 769, 31 U.S.P.Q. 360. In that case, Ellis had filed a suit under sec. 4915 R.S. after the Patent Office had refused him a patent. While this suit was pending he filed a second application with different claims to the same general subject matter but differing in scope and language. How greatly different the claims of the two cases were, is evident from the copies thereof set forth on page 381, as follows:

Appealed Claims

16. An article of manufacture carrying a tenacious translucent surface veneer of urea resin and cellulose fiber interreacted to substantial disappearance of fiber.

46. The process of producing veneered articles of manufacture which comprises applying thereto a molding urea resin composition, heat treating the composition at a temperature of from 100-150° C. to cause setting, and baking the heat set composition until its water resistance is substantially increased.

Claims of Abandoned Appl'n.

17. A process which comprises impregnating paper with urea formaldehyde material, drying in an oven at 60 to 70° C. for fifteen minutes, and hot pressing the dried material.

18. A molded article of paper and urea formaldehyde material baked at a mild heat to improve its resistance to water.

19. A pressed sheet of paper and urea formaldehyde material baked at 60 to 70° C. for at least half an hour to improve its waterproof quality. [249]

Appealed Claims

47. The process of producing water resistant molded urea resin articles which comprises heating a urea resin composition to cause setting, and baking the heat set composition at a temperature lower than that used in the setting operation until the water resistance of the material is substantially increased.

49. An article of manufacture carrying a tenacious veneer of a urea-formaldehyde type condensation product.

50. An article of manufacture carrying a substantially water resistant, tenacious, translucent surface veneer of a urea-formaldehyde type resin.

Claims of Abandoned Appl'n.

20. A baked, molded article from paper and urea resin.

21. A baked molded article from paper and urea formaldehyde resin.

The Court, in affirming the Board's rejection of the claims of Ellis' second application on the ground that they defined nothing patentable over the rejected claims of the first application, said (p. 382):

> "* * * When appellant dismissed his suit in equity as to application 742,719, the decision of the board became the final decision, so far as appellant was concerned, as to all subject matter actually contained in any of its claims, and appellant is bound thereby."

Certainly it cannot be said that the counts of the instant interference are directed to patentably different subject matter from claim 20 of Hall's first application or claim 14 of Hall's second application; at best they represent a mere variance in scope. [250]

Other decisions to which reference may be had are the following:

In re Becker,
22 C.C.P.A. 843, 1935 C.D. 207;

In re Parker, et al.,
26 C.C.P.A. 1359, 1939 C.D. 745;

In re McKee,
25 C.C.P.A. 1064, 1938 C.D. 478;

Edgerton v. Kingsland,
1948 C.D. 1, 75 U.S.P.Q. 307.

It is submitted that the above decisions and others cited therein, make it clear that it is the duty of

the Patent Office to reject an application on the ground of res judicata in all cases where that ground is applicable.

The Hemphill v. Coe case, supra, written by Justice Rutledge when sitting on the Court of Appeals for the District of Columbia, and who was later Associate Justice of the U. S. Supreme Court, is the latest pronouncement by that Court on the question at bar. It is clearly binding upon the Patent Office. That decision, from which we quoted extensively in the brief heretofore filed, is the final authority upon the proposition of law that a final adjudication of one case is conclusive insofar as all presentable issues are concerned; that a continuing application, to be entertained by the Patent Office, must contain added disclosure which, itself, independently of the disclosure of the parent case, sets forth patentable subject matter. It is insisted that the Examiner either follow the law as announced in this decision, or state his views fully as to wherein that law is not applicable to the facts at bar, so that his views will be available for consideration by a reviewing tribunal by petition or otherwise. [251]

In Lavin v. Pierotti, supra, the Court of Customs and Patent Appeals extended the Hemphill v. Coe doctrine to adjudications made by the Primary Examiner even though no appeal was taken to the Board or to the Court. Thus the legal effect of the Hemphill v. Coe decision has been endorsed by the C.C.P.A. upon the proposition that all claims and

issues must be decided in one proceedings which were competent there to be decided regardless of whether or not the claims are to the same patentable subject matter. In the instant case, not only was an appeal to the Board taken in the second filed Hall case, but an appeal to the Court of Customs and Patent Appeals was perfected but was later abandoned by Hall. This case therefore falls clearly within the teeth of the Hemphill v. Coe case. Indeed, the doctrine of res judicata applies even without the authority of Hemphill v. Coe and Lavin v. Pierotti, supra, for the reason, as stated, that the counts of the interference are to the same subject matter as those which were abandoned in the first Hall application. Moreover, the counts are also broader than those which Hall asserted in his second case and which were appealed to the Court.

New Evidence Shows the Claims Are Unpatentable to Hall

In view of the facts set forth below it is submitted that the Examiner should dissolve the interference on the ground that the counts are unpatentable to Hall in view of the paper [252] entitled "Factors Influencing Bond Between Cement and Formation" delivered and published by distribution of copies in March, 1940, and in view of the publication of the same paper in Petroleum World in June, 1940.

The first of these publications is a statutory bar against Hall's earliest application S.N. 388,891, filed April 16, 1941, and the second is also an insurmount-

able bar to that application because Hall's preliminary statement in the interference alleges no date earlier than April 7, 1941.

The Petroleum World publication was considered by the Board of Appeals in the ex parte prosecution of Hall's interfering application No. 55,619, and the Board allowed the interfering claims 23, 24, and 31, saying:

> "The Petroleum World publication does not clearly disclose that the support, which seems to be illustrated in Fig. 26, is rotatably mounted on the exterior of the casing and, although it may be that in the actual structure reproduced in Fig. 26, the support was made reciprocable on the casing and also rotatable thereon, this cannot be determined from the record before us. Furthermore, although the ends of the whiskers disclosed in Fig. 26 appear to be bent in a generally sidewise direction with respect to the radius of the support, the whiskers do not project in this manner from a point on the periphery of the support as recited in these claims. Without further evidence, it cannot be held merely from the disclosure of the publication that the scratcher illustrated in Fig. 26 was constructed in accordance with these claims or functioned as disclosed in the application on appeal."

It will be noted that the Board said that the publication did not clearly disclose that the support

is rotatably mounted on the casing; that although in the actual structure the [253] support may have been reciprocable and also rotatable, "this cannot be determined from the record before us"; and that "without further evidence" it cannot be held merely from the disclosure of the publication that the scratcher was constructed in accordance with the appealed claims.

In holding the publication insufficient itself as a reference, the Board must have overlooked the two stop collars on the casing, in Fig. 26, one spaced above and the other positioned just below the scratcher. It is believed to be clear beyond question that this showing would mean to one skilled in the art, that the scratcher was reciprocable between the stop collars, and it would follow that being reciprocable it would also be rotatable since both the scratcher and the casing are cylindrical. Hall did not attempt to explain away the presence and function of these stop collars.

What "further evidence" the Board may have had in mind is not clear, but further and conclusive evidence in the form of affidavits of those skilled in the art and who were present at the actual demonstration described in the publication, are presented herewith. These affidavits clearly show that to those skilled in the art the disclosure in Fig. 26 means that the scratcher is mounted on the casing for rotation and for reciprocation between the two stop collars, and that in the demonstration, the scratcher

moved in this manner and was rotated by the whiskers. [254]

In the brief before the Board of Appeals, (page 29) Hall's counsel argued first that the "Factors Influencing Bond Between Cement and Formation" paper was not really a publication within the meaning of the law and that the first publication was in the June, 1940, article in the Petroleum World, and second that neither publication disclosed the subject matter of the claims. It is clear from Hall's testimony that:

Hall was present and saw the device of Fig. 26 before his alleged invention (affidavit of McClure, hereto attached);

The device of Fig. 26 was rotatable on the casing and rotated thereon during reversal of the direction of travel of the casing (Wright affidavit, page 6, and Jones affidavit, pages 6 and 8, both hereto attached);

The mudcake removal of this scratcher was very satisfactory (Jones affidavit, page 8).

As a result of these tests, witnessed by Hall, Jones recommended to his company the use of the B. & W. scratcher, and they were used continuously thereafter.

(From the Jones affidavit):

> "As a result of these tests, I recommended to the Union Oil Company the use of the B. & W. scratchers in Union Oil Company cementing

operations, and the B. & W. scratchers were adopted and used by the Union Oil Company from the time of my recommendation until at least the time of my retirement (spring of 1949) from the company, and I am informed they are still being used thereafter." (Jones affidavit, page 10.)

Jesse E. Hall witnessed these demonstrations made publicly, and certainly as such demonstrations were made [255] before his (Hall's) alleged date of invention, he (Hall) cannot claim to be the inventor of the devices he saw demonstrated.

Furthermore, it is evident that Fig. 26 of the publication shows to anyone skilled in the art that the scratchers are mounted on the casings so as to rotate. John B. Spaulding, in his affidavit, hereto attached, clearly establishes this fact. Mr. Spaulding is thoroughly qualified from his experience with oil tools to so testify. Mr. Spaulding has been for over 20 years engaged in the manufacture of oil well equipment. He is a plant manager of the National Supply Company, the largest oil tool manufacturing company in the United States.

Mr. Alan H. Hambly, in his affidavit, establishes clearly that the scratcher of Fig. 26 is rotatable on the casing and would so rotate on reciprocation of the casing. Mr. Hambly is manager of the patent department of Byron Jackson Co., another large concern engaged in the manufacture of oil well tools.

Neither Spaulding or Hambly have an interest in this controversy. Their affidavits are based on their experience in the oil tool industry. Their affidavits state what they are taught by Fig. 26 as experienced operators in the oil tool art. Certainly these affidavits establish beyond all doubt the clear teaching of Fig. 26; and by those skilled in this art, with this evidence and with the facts established that Jesse E. Hall witnessed the demonstrations of the Fig. 26 device and [256] its successful operation, it cannot be held that Hall is entitled to a patent which would dominate or which would unpatentably distinguish from the successful scratcher of Fig. 26. Hall cannot be issued a patent for what he knows was the development of another. Hall knows the scratcher of Fig. 26 was rotatably mounted on the pipe. On reversal of reciprocation, such a scratcher will and does rotate. The wires are stressed during such reversal. The rotation of the supporting collar is inherent and cannot be avoided.

Patentability to Hall cannot be predicated upon such inherent operation of a prior existing device.

It is difficult to see how such arguments could have been justified as Hall knew at that time that in the actual demonstration on which the publications were based, the scratcher rotated as the claims describe, as Hall himself was present at the demonstrations and saw the operation, as his testimony establishes.

This knowledge by Hall is inconsistent with his

oath to his first application, since he knew when he made the oath that the substance of the invention was known by others before he made the invention, since according to his preliminary statement his earliest date is April 7, 1941.*

As to the sufficiency of the disclosure of the prior publications as a basis for holding the claims unpatentable, it should be noted that the Examiner in his Decision on Motions held that the Oil Weekly publication of July 7, 1941, Exhibit A, [257] anticipated Wright. Yet this publication does not describe the scratcher sleeve as being rotatable on the casing. The Examiner was right in this holding, but the publication he used is no better as to disclosure of rotatability of the sleeve than are the Jones and Berdine paper "Factors Influencing Bond Between Cement and Formation," and June, 1940, Petroleum World publication.

Consistency, and justice, and the new evidence now presented including the now disclosed presence of Hall at the demonstrations, all require that the claims be held unpatentable to Hall instead of unpatentable only to Wright.

On this matter the Examiner is not concluded by the Board's decision, because, first, this is an inter partes proceeding and, second, the Examiner now has evidence which was not before the Board.

---

*A copy of the Hall preliminary statement has been served on Wright.

No one could seriously argue that it would be invention to bend the whiskers in the Jones and Birdine publication sidewise starting at the sleeve, instead of at a point along the length of the whiskers. Such a standard of invention, in the light of the U. S. Supreme Court decisions for the past few decades, would be absurd on its face.

Hall, in his brief before the Board of Appeals in S.N. 55,619, laid great stress upon the scratcher being rotatably mounted upon the well casing. Yet, from his own advertisements of the Weatherford Spring Company, it appears to be immaterial whether the collar is rotatable on or fixed to the well casing. Thus, in the publication, Oil and Gas Journal, for December 25, 1941, page 258, Exhibit C, attached to Wright's Motion to Dissolve, it is stated that: [258]

> "Scratchers are commonly anchored to the pipe by welding small lugs above and below, allowing for approximately 10" of up and down travel. This floating movement keeps the pipe stripped clean. However, scratchers may be welded direct to the pipe." (Emphasis added.)

Here, the only function attributed to the mounting of the scratcher between the lugs is to keep the pipe stripped clean.

Substantially the same wording appears in the advertisement in the Oil and Gas Journal of September 11, 1941, page 65, Exhibit B, attached to

Wright's Motion to Dissolve, which reads as follows:

> "The scratchers are usually anchored in place by welding small lugs above and below, allowing for approximately 10" of up and down play. This floating movement of the scratchers keeps the casing or liner stripped clean. However, the scratchers may be welded direct to the pipe and this procedure is not uncommon." (Emphasis ours.)

Thus, the Acme scratchers described in this publication, and made by Weatherford Spring Company, may be either disposed between lugs or, as is stated to be not uncommon, welded direct to the pipe.

The Weatherford Spring Company advertisement appearing in the Oil Weekly, for July 7, 1941, page 37, Exhibit A attached to Wright's Motion to Dissolve, also refers to mounting the scratcher between lugs above and below the scratchers, but this advertisement did not include the statements which appeared in the later publications, Exhibits B and C, with reference to welding the scratcher directly to the pipe. The latter two publications deflate the arguments on rotatability which Hall made; but what is more important, they indicate that Hall knew that in order to obtain rotation of the scratcher on the well casing, stop lugs had to be mounted above and below the scratcher. [259]

Yet, when confronted with the Jones and Berdine publication, Fig. 26, which is a statutory bar against

Hall, Hall urged that the publication did not state that the scratcher was rotatably mounted on the well casing. Nothing was said about the stops, which are clearly shown welded to the casing above and below the scratcher, not only in Fig. 26 of that publication, but also in Figs. 14 and 18, respectively. Actually, Hall did not, and could not, explain away the presence of the stops in these Figures of the publication. The answer is obvious—Hall knew very well from his having witnessed the Jones and Berdine demonstrations that the stops shown on the demonstrated structure were provided for identically the same purpose that Hall instructed users of his device to weld lugs to the casing, to wit, to permit the scratcher to rotate on the well casing.

Hall's position becomes more anomalous when the fact is considered that, in seeking to avoid dissolution of the interference on the ground urged by Wright that Counts 1 and 2 are incomplete and are drawn to an inoperative structure because stops or lugs are not recited in the counts, Hall argued that the use of stops was:

> "conventional practice long prior to the time that either Hall or Wright entered this art." (Memorandum in Opposition to Wright's Motion to Dissolve, page 2.)

Again, on page 3 of this Memorandum, Hall argued:

> "All of the essential elements necessary to properly claiming the invention of the counts

has been included without specific mention of the limiting lugs or stops which were conventional, as previously noted."

Had Hall frankly admitted before the Board of Appeals in S.N. 55,619 that it was conventional to mount a rotatable member on [260] a casing between stops instead of remaining silent, the Board never would have allowed claims 23, 24 and 31 over the Jones & Berdine publication, and it did so only by placing these claims under a serious cloud of patentability through its comments with respect to the lack of evidence on the question of rotatability of the scratcher shown in the publication. Certainly, Hall's admissions as to what was common practice and conventional "long prior to the time that either Hall or Wright entered this art" constitute new evidence which was not before the Board of Appeals and which the Examiner may properly consider to re-evaluate the patentability of claims 23, 24 and 31. Certainly there would be no invention in mounting the scratchers of the publication for rotation on the casing, if it were not already so mounted (which it is), in view of what Hall now asserts and admits was so old and conventional. Whether the sidewise bending of the whiskers starts at the sleeve or at some point along the length of the whiskers is wholly immaterial insofar as the function of producing rotation is concerned. The matter is one of degree, and not invention.

The Examiner Plainly Erred in Granting Hall's Motion to Shift the Burden of Proof on the Basis of S.N. 388,891

Reconsideration is respectfully requested of the Examiner's granting of Hall's motion to shift the burden of [261] proof on the basis of Hall application, S.N. 388,891, filed April 16, 1941. In granting the motion, the Examiner presumably had in mind the mistaken idea that Hall owned that application. As will appear more fully hereinafter, Hall had assigned S.N. 388,891 to Wright long before Hall filed his alleged continuation-in-part application S.N. 627,013, on November 6, 1945, and its continuation application S.N. 55,619 on October 20, 1948, neither of which are assigned.

Wright opposed Hall's motion to shift the burden of proof on the ground that the counts must be so narrowly interpreted, in the light of the Board's refusal to allow claim 18 in S.N. 55,619, as not to be readable on Hall S.N. 388,891. The Examiner, notwithstanding Wright's arguments and the Board's refusal to allow claim 18 (and other claims such as claims 27 and 30), and much to Wright's surprise, construed the expression "angular inclination having sidewise direction" to require

> "only that the wire whiskers be inclined in a sidewise direction. The term 'angular inclination having sidewise direction' in the counts is sufficiently broad to cover the horizontally positioned wires of Serial No. 388,891 since they have sidewise direction, i.e., extend in a direc-

tion somewhat suggestive of a tangential manner." (Dec. on Motions, page 304, emphasis ours.)

Apparently, through inadvertence, the Examiner failed to note that Hall application S.N. 388,891 indicates on its face that it was assigned to Wright and as a consequence erred in not following established practice concerning the situation created as a result of his own ruling that S.N. 388,891 supports the counts. [262]

The Examiner having held that the counts are supported by application S. N. 388,891, he should have treated the subject matter of this application as prior art against the Hall alleged continuation-in-part application S. N. 627,013, as well as against the continuation thereof, S. N. 55,619, and should have rejected the claims to Hall in view of the long established Patent Office practice as outlined on page 17 of the "Manual of Patent Examining Procedure," Section 304, reading as follows:

"304. Conflicting Subject Matter in Two Applications of Same Inventor, One of Which Is Assigned

"Where applicant has pending two applications with overlapping subject matter therein, and assigns one of the applications in its entirety, which assignment is duly recorded in the Patent Office, the assigned application at once may become a reference against the second application for all common subject matter dis-

closed, irrespective of the dates of filing of the two applications, and also of any subsequent assignment of the second case."

This directive concerning Patent Office practice is binding upon the Examiner and is in strict harmony with long existing precedents. See, for example, Wolcott's "Manual of Patent Office Procedure" (9th Edition), page 47, reading as follows:

> "In the examination of applications of the same applicant for the same general subject matter with overlapping claims, the Examiner should note whether any of the applications are assigned. If there be one of the applications assigned, it should be treated as prior art as against the other application or applications, as set forth in ex parte McLaughlin, 1891 C.D. 67." [263]

McCrady's book entitled "Patent Office Practice," (2d edition, page 145) outlines the practice as follows, the cases cited in the footnotes appearing in parentheses:

> "The Office treats as prior art the disclosure of an assigned application against an unassigned application of the same inventor (Ex parte McLaughlin, 1891 C.D. 67, 55 O.G. 863), regardless of whether or not such disclosure is fully covered by the claims of the assigned application (Ex parte Adams, [1907 Apr. 3,] 19 Gour 40:25; quotation from opinion Glascock 1934, Sec. 140), and regardless of the relative

filing dates of the two applications. The basis for this policy is fairness to the assignee, who otherwise might find himself with a great deal less than he had bargained for. Where an inventor assigns two applications to different assignees, the application first assigned is prior art against the one later assigned, (In re McCormick, 1905 C.D. 106, 116 O.G. 1183.)"

Now, as a matter of record, this same party Hall was involved in two previous interferences with the party Wright, as follows:

Interference No. 81,240
Hall S. N. 388,891, filed April 16, 1941,
Wright S. N. 369,389, filed Dec. 10, 1940.

Interference No. 81,559
Hall S. N. 528,183,
Wright Patent No. 2,338,372.

Both of these interferences were terminated in Wright's favor following the filing of a concession of priority by Hall to Wright in the respective interferences. In addition, Hall assigned both of his applications to Wright under the terms of an agreement executed on September 15, 1944, and duly and promptly recorded in the U. S. Patent Office on October 9, 1944, in Liber [264] 0-200, page 479. Under the terms of the agreement, Hall retained the right to prosecute his applications.

Upon examination of the file jacket of Hall, S. N. 388,891, the Examiner will find the following endorsement plainly written on the face thereof:

"Assor. by mesne assigts. to B. and W. Inc., Long Beach, Calif., a corp. of California."

indicating that Hall assigned the application to Wright and that Wright later assigned it to his company, B. & W., Inc., of Long Beach, Calif.

A recent assignment investigation of the Patent Office records shows that there are no assignments of record concerning Hall S. N. 627,013 and Hall S. N. 55,619 which, as the Examiner knows very well, are based upon an entirely different type of well scratcher (tangential whiskers, studs, etc.), from that disclosed in S. N. 388,891. If there has been any assignment of either of these two later applications, neither Wright nor his assignee, B. & W., Inc., has any knowledge thereof.

In fact, Hall in the exercise of his right to prosecute, abandoned S. N. 388,891 without Wright's knowledge or consent and filed S. N. 627,013 and S. N. 55,619, without consulting Wright or anyone connected with Wright's assignee, B. & W., Inc.

When Hall filed S. N. 627,013, he based the same upon an entirely different type of well scratcher from that disclosed in S. N. 388,891. That is to say, the disclosure was based upon a substantially tangential arrangement of the whiskers, [265] the fastening of the whiskers to the sleeve by studs, etc., structure not disclosed anywhere in S. N. 388,891. He carried over only a portion of Fig. 1 of S. N. 388,891 as Fig. 3 in S. N. 627,013.

Hall Thus Started Off Anew.

The identity of the scratcher disclosed in S. N. 388,891 was effectively obliterated insofar as S. N. 627,013 is concerned. All six of the original claims of the new application were limited so as not to be readable upon S. N. 388,891. In other words, the scratcher shown in S. N. 388,891 was deliberately abandoned in favor of a later developed type of scratcher constituting the basis of S. N. 627,013.

It is submitted that it is apparent from the foregoing that, if the Examiner had consistently considered the counts to be readable upon the Wright-owned Hall application S. N. 388,891, then the instant interference should never have been declared. Instead, the Examiner should have treated Hall's assigned application S. N. 388,891 as prior art against his unassigned applications S. N. 627,013 and S. N. 55,619, and rejected all claims therein reading on the assigned application.

The Examiner having improperly declared this interference, and having now held that the counts are supported by the Wright-owned Hall application, S. N. 388,891, the Examiner has no alternative but to:

(1) Follow the Commissioner's directive applicable to the facts of this case and hold that Hall is estopped to [266] contest priority with Wright on the basis of any claims reading on S. N. 388,891, and is not entitled to any of the counts on the basis of either of Hall's unassigned applications, S. N. 627,013 and S. N. 55,619, and, accordingly,

(2) Dissolve the interference.

Actually, it is the duty of the Examiner to see to it that Hall is not allowed any claims in any application that reads on the disclosure of assigned application, S. N. 338,891; otherwise, Hall will succeed in securing a wholly invalid patent.

In other words, the Examiner must recognize assigned application, S. N. 388,891, as a fatal barrier to the grant of any claims to Hall which read thereon.

The procedure called to the Examiner's attention hereinabove is sound, long sanctioned, necessary to serve the ends of justice, and the well accepted practice. Its very purpose is to prevent an applicant from working an injustice upon the assignee of one of his applications by seeking in another but unassigned application claims which read on the disclosure of the assigned application.

Since Hall is not entitled to any benefit from the assigned application, S. N. 388,891, and since Hall is estopped to contest priority and to assert any claims reading thereon in both unassigned applications, S. N. 627,013 and S. N. 55,619, Hall's Motion to Shift the Burden of Proof should have [267] been denied. Likewise, the Examiner should have ruled, and must now rule, that Hall is not entitled to the interference counts on the basis of either S. N. 627,013 or S. N. 55,619.

The Examiner Should Have Granted Wright's Motion to Dissolve Based on Prior Publications Because Hall Is Not Entitled to the Filing Date of S. N. 388,891.

Reconsideration is requested, and it is respectfully submitted that the Examiner erred in denying Wright's Motion to Dissolve based upon Hall's own publications which were available more than four years before Hall filed his so-called continuation-in-part application S. N. 627,013.

The recorded agreement referred to above states that:

> "Hall is engaged in the manufacture of devices * * * under the name and style of Weatherford Spring Company * * * Weatherford, Texas."

Thus, Hall and the Weatherford Spring Company are one and the same. The publications attached to Wright's Motion to Dissolve as Exhibits A, B and C are all publications of Hall's company, the Weatherford Spring Company. These publications are identified in the Motion as follows:

Exh. A—"The Oil Weekly," July 2, 1941, page 37.

Exh. B—"The Oil and Gas Journal," Sept. 11, 1941, page 65.

Exh. C—"The Oil and Gas Journal," Dec. 25, 1941, pages 258 and 259.

Each of these publications has been held by the Examiner in his decision on motions (page 6) to

anticipate the interference counts. Wright had contended that the counts were not [268] supported by Hall S. N. 388,891 and that, therefore, these publications constituted a statutory bar against Hall whose first case, S. N. 627,013, disclosing the subject matter of the publications had not been filed until four years after the date of these publications.

The Examiner, in referring to the July 7, 1941, publication, held that:

> "The publication is not a reference for the party Hall because Hall is held to be entitled to the filing date of his earlier application, Serial No. 388,891, filed April 16, 1941." (Dec. Motions, p. 6.)

Here again, although the Examiner ruled contrary to Wright's contentions, he (the Examiner) committed manifest error in failing to recognize that in holding the counts readable on the Wright-owned Hall application, S. N. 388,891, he should have refused to give Hall the benefit of the filing date of that case for any common subject matter and should have held that the several publications constitute a clear statutory bar against both of Hall's applications, S. N. 627,013 and S. N. 55,619 (Ex parte McLaughlin, 1891 C. D. 67, in re McCormick, 1905 C. D. 186, and Sec. 304, "Manual of Patent Examining Procedure").

Hall cited these same publications in his Motion to Dissolve as to Wright. Hall unequivocally admitted on page 2 of that Motion that:

"Each of said publications above noted discloses the invention of the counts."

Accordingly, these publications constitute a bar against Hall [269] as to any and all subject matter reading thereon.

In view of the foregoing, the granting of Wright's Motion to Dissolve based on the publications being a statutory bar against Hall, S. N. 627,013 and S. N. 55,619, is again requested.

The Examiner Committed Manifest Error in Not Granting Wright's Motion to Dissolve Based on Laches.

Reconsideration is requested of Wright's Motion to Dissolve because of Hall's laches in presenting claims.

In denying this Motion, the Examiner fell into error in holding that the decision of Muncie Gear Works, Inc., v. Outboard Marine & Mfg. Co., 1942 C.D. 761; 315 U. S. 759:

> "is not deemed controlling. The acts of the party Hall do not constitute an abandonment of the invention." (Dec. Motions, page 8.)

It is a matter of record that Hall filed S. N. 627,013 on Nov. 6, 1945, just two days before he abandoned S. N. 388,891 through failure to appeal from the final rejection thereof. This abandonment occurred without Wright's knowledge and consent, and at a time more than one year after the assign-

ment of S. N. 388,891 had been recorded in the Patent Office (Liber 0-200, page 479).

Hall and his attorney knew and recognized at that time that Hall was not entitled to any claims reading on the Wright-owned Hall application, S. N. 388,891. In fact, the disclosure of S. N. 627,013 was based upon an entirely different form of [270] scratcher from that disclosed in S. N. 388,891. While S. N. 627,013 purported to be a continuation-in-part of S. N. 388,891, it carried over only a portion of Fig. 1 of S. N. 388,891 as Fig. 3 in S. N. 627,013. The identity of the scratcher disclosed in S. N. 388,891 was thus completely lost and obliterated, insofar as S. N. 627,013 is concerned. In other words, it was deliberately abandoned because Hall knew he was not entitled to any claims in the new case which read thereon.

The Examiner's comment that:

> "when such application (S. N. 388,891) was abandoned, the continuing application, S. N. 627,013, presented claims to the subject matter of the collar and its wire scratchers * * *"

is only a half-truth, because the Examiner has failed to note the fact that none of the original six claims presented in S. N. 627,013 is readable on the disclosure of S. N. 388,891. Hall deliberately abandoned the scratcher shown in S. N. 388,891 and started prosecution anew based upon a different structure. The Examiner has thus failed to sustain

continuity of claiming as well as lack of abandonment, which he mistakenly assumed to exist.

On the other hand, all of the original claims of S. N. 627,013 obviously read squarely upon the scratchers which were sold by Hall, publicly used, and disclosed in Hall's own publications (Exhibits A, B and C attached to Wright's Motion to Dissolve) more than four years before Hall filed [271] S. N. 627,013. The oath of the application, as the Examiner will see, is based upon "one year" averments, which appear to be invalid. The presentation of broader claims, such as the present counts, some eight years later in S. N. 55,619 cannot avoid the Muncie doctrine for the obvious reason that Hall can gain nothing now as a result of his improperly filed application, S. N. 627,013.

Hall clearly abandoned any and all claims reading on S. N. 388,891 when he filed S. N. 627,013 on the basis of a different disclosure and restricted all of his original claims to that different disclosure. An attempt eight years later to recapture that abandoned subject matter by broadly worded claims constitutes a flagrant case of laches that cannot be condoned or countenanced.

It is submitted that the Supreme Court's decision in the Muncie case is clearly applicable here. If, for any reason, the Examiner does not see fit to apply it to this case, he is requested to state his reasons in full so that they will be of record for consideration by any tribunal which may be called upon to review his action.

Accordingly, Wright's Motion to Dissolve, in view of Hall's laches in claiming the subject matter of the counts, should be granted. [272]

To recapitulate, Hall did not seek to continue the prosecution of the question subject matter when application S. N. 627,013 was filed—just two days before the abandonment of S. N. 388,891. The Oath, an indispensable part of "an application," was confined to the statutory bars existent against the new case, under the law. The oath supported only the claims of the new case. It was not therefore a continuation-in-part or in all of the first case. Accordingly no petition can be made for claims common to the parent case. When the old case (S. N. 388,891) became abandoned there was therefore no "application" to continuing subject matter. Under no circumstances could the invention claimed in S. N. 627,013 be considered as assigned to Wright in accordance with the agreement of record. That contract is limited to the invention disclosed in Hall's application, Serial No. 388,891. The invention upon which an application for patent was made in S. N. 627,013 was to different subject matter.

The situation becomes worsened when the third Hall application, S. N. 55,619, is considered. There, as the case was filed, Hall expressly abandoned the subject matter of the intermediate continuing case, S. N. 627,013. He did not again solicit tangential claims. The third application, therefore, is not a continuation or a continuation-in-part of the second Hall application. Hall's second case (627,013) did not continue the first application, nor did his third

application (55,619) continue the subject matter of his petition in the second case. The law question is simply this—was Hall throughout this 10-year period petitioning the Patent Office for the grant of a patent on a single invention? The answer is manifestly "no" as it is evident from and attested by the claims which Hall took oath to and which he petitioned the Patent [273] Office to grant him. To give Hall the benefit of application S. N. 388,891 for the subject matter of application S. N. 55,619 is to let Hall in effect file a renewal application. Both his second and third applications are barred by the publications and prior uses herein referred to. Continuity in petitioning for a patent can only be tested by the same reasoning as is applied in reissue cases, and that is, were the claims which the petition seeks to have granted for the same invention. The sameness of invention is tested by the claims, not the drawings or the descriptive portions of the specification. The gap provided by the second application which petitioned for claims only to the tangential relationship of the wire, i.e., a different invention, would block Hall's continuity of his petitions. It therefore cannot be said that S. N. 55,619 is a continuation in part of application 627,013 or application S. N. 388,891.

Attention is called to the following statements in Sec. 37, Title 35, U.S.C.A.:

> "A second application must be for substantially the same invention in order that the two applications may be considered one continuous proceedings."

Citing:

Weston v. White,
13 Blatchf. 447; Fed. Cas. No. 17,459;

Globe Nail Co. v. Superior Nail Co.,
27 F. 450.

Further in this same Annotation is found:

"Where an application has been entirely abandoned a second application cannot be considered as a continuation of such abandoned application."

Citing:

Kittle v. Hall,
29 Fed. 508;

Weir v. Morden,
21 Fed. 243;

Lindsay v. Stein,
10 F. 907.

When Hall filed the second application, S. N. 627,013, and petitioned for the grant of claims only to the tangential wire, he abandoned entirely the petition to the Patent Office to grant him claims on the invention of S. N. 388,891. [274]

The Examiner's Broad Interpretation of the Counts Requires Their Rejection on Black, et al., 2,151,416

The Examiner's holding that the language of the counts, to wit, "angular inclination having sidewise direction," means

> "only that the wire whiskers be inclined in a sidewise direction" (Dec. Motions, p. 3),

places such a broad interpretation upon the Counts as to render them clearly unpatentable over the patent to Black, et al., 2,151,416, of record in Hall, S. N. 55,619.

A holding of the Counts as unpatentable is now required in view of the Examiner's broad interpretation, particularly when considered in conjunction with the statements made in the decision of the Board of Appeals in connection with this same Black, et al., patent. The Board in its decision stated:

> "Since it (Black, et al.'s, cleaner) may obviously be used for cleaning a well bore and is in the form of a scratcher, it is obviously pertinent to the claims on appeal. The Black, et al., scratcher includes an annular support 10 which is hollow and is therefore 'adapted to be rotatably mounted on a well casing.' " (P. 6.)

> "It would therefore not involve invention merely to rotatably mount the support on the exterior of the well casing." (P. 9.)

The patent to Black, et al., as will be self-apparent from the copy of the drawings thereof attached hereto as Exhibit A, clearly discloses wire whiskers 15 having portions 17 which are non-radial and which have a sidewise inclination of [275] about 6° to a radius drawn to the projection point of any given whisker, as indicated by the dotted lines,

which have been added (in red ink on the original) to Fig. 2. In Fig. 1, of the Black patent, the wire whiskers 15 are shown disposed horizontally, so that it necessarily follows that the whiskers have a sidewise direction of 6° to the radial line marked R in Fig. 2. The Black, et al., specifications specifically states that the over-all diameter of the cleaner is somewhat in excess of the interior diameter of the liner (page 2, col. 1, lines 67-68, and col. 2, lines 1-2). In order to indicate this relationship, a casing marked C has been indicated in dotted lines on Fig. 2 (in red ink on the original); and the position which the whiskers take when inserted in such casing has been indicated by dot-and-dash lines in Figs. 1 and 2. The sidewise angle is noted in Fig. 2 by the angle A.

By way of comparison, a photostat copy of the drawings of Hall S. N. 388,891 is atached hereto as Exhibit B, and dotted lines have been added to Fig. 2 (in red ink on the original) to show that the whiskers are inclined sidewise on an angle of about 30° to the radial line and 60° to the tangent.

The specification of the Black, et al., patent also makes it clear that the cleaning device, in use, is reciprocated up and down in the liner (p. 2, col. 1, lines 36-39). Obviously, upon reciprocation, the whiskers 15 will inherently cause rotation of the support 10.

In the light of the Examiner's broad interpretation of the Counts, it is quite apparent that the ex-

pression "angular [276] inclination having sidewise direction" is not limited to any particular angle.

Furthermore, claims 27 and 30, which the Board held unpatentable over Black, et al., necessarily require the "angular inclination" of the whisker to be in a sidewise direction; otherwise, they would not be inclined to the plane passing through the axis of the casing and the point where the whisker projects from the support. Specifically, rejected claims 27 and 30 recite:

> "each whisker projecting from a point on the periphery of the support at an angular inclination with respect to a plane including both the radius of the support drawn to the projection point of that particular whisker and the axis of the support, and all in substantially the same angular relation with said support."

as stated above, the only angular inclination that the whisker could possibly have with respect to the plane called for in claims 27 and 30 is sidewise.

It is apparent, therefore, that the Examiner has [??] the counts a scope comparable to that of claims 27 and 30, [??] which were rejected by the Board.

The Board has held that the Black, et al., device "must obviously be used for cleaning a well bore." It has also held that the Black, et al., device is "adapted to be mounted on a well casing" and that it would "not involve invention to rotatably mount the support on the exterior of the well casing." All of this is apparent from the quoted statement ap-

pearing in the [277] Board's decision. With these rulings of the Board, and the disclosure of the Black, et al., patent, in mind, the Counts are clearly readable upon that patent, as follows:

Count 1. In combination with a well casing, a support (10) rotatably mounted on the exterior of said casing, stiff wire whiskers (15-17) each flexibly (coil 18) attached at one end to said support and each projecting from a point on the periphery of the support (10) at an angular inclination (6 degrees) having sidewise direction with respect to the radius of the support drawn to said projection point of the particular whisker, and all in substantially the same angular relation with the support.

Count 2. In well cleaning equipment, a casing reciprocable in the bore of a well, a support (10) rotatably mounted on the exterior of said casing, stiff wire whiskers (15-17) each flexibly attached at one end to said support, and each projecting from a point on the periphery of the support at an angular inclination (6 degrees) having sidewise direction with respect to the radius of the support drawn to said projection point of the particular whisker and all in substantially the same angular relation with the support, the free ends of said whiskers [278] being of a length to frictionally contact the well wall and abrade its surface upon reciprocation of the casing, said whiskers upwardly inclined on the downstroke and downwardly inclined on the upstroke of the casing and upon reversal of the casing travel adapted to fulcrum both at their

points of contact with the well wall and substantially at their points of attachment with the support whereby vertical movement of the casing after each reversal rotates the support on the casing, thereby relieving bending stress on the whiskers and shifting the whiskers circumferentially upon the well bore to contact and abrade a different area upon each casing reciprocation.

Count 3. A well bore cleaning scratcher adapted to be rotatably mounted on a well casing comprising an annular support (10), stiff wire whiskers (17), each flexibly (coil 18) attached at one end to said support (10) and each projecting from a point on the periphery of the support at an angular inclination (6 degrees) having sidewise direction with respect to the radius drawn to said projection point of the particular whisker and all of said whiskers projecting in substantially the same angular relation from said support. [279]

The Examiner having broadly construed the Counts, and having erred in not holding the same unpatentable over Black, et al., 2,151,416, it is requested that the Examiner, to be consistent with the Board's rejection of claims 27 and 30, now make such a ruling.

Conclusions

In view of the many aggravating circumstances herein presented, it is thought that the Examiner would welcome a rehearing and Wright would welcome an opportunity to thresh out by oral argument

the various fact and law questions presented. The Hall case, if Hall's position is correct, is now nearly 10 years old and certainly Hall should not complain at the slight delay which would be caused by setting the case down for argument.

1. For any one and all of the reasons herein urged, the Counts should be held unpatentable to Hall and the interference should, accordingly, be dissolved.

Respectfully submitted,

LYON & LYON,
Principal Attorneys of Record
for Wright.

By /s/ LEWIS E. LYON,

By /s/ R. E. CAUGHEY,

BACON & THOMAS,
Associate Attorneys of Record.

By /s/ FRANCIS D. THOMAS,

By /s/ HARRY W. F. GLEMSER,

By /s/ WM. WALLACE COCHRAN.

It is hereby certified that a copy of the foregoing Request for Reconsideration has been sent, by registered mail, this 2nd day of February, 1951, to Mr.

Thomas E. Scofield, 1325 Rialto Building, Kansas City, Missouri, counsel for the party Hall.

BACON & THOMAS,
Associate Attorneys.

By BACON & THOMAS.

Washington, D. C. [281]

(Copy)

In the United States Patent Office

Before the Examiner of Interferences

Interference No. 84,411

JESSE E. HALL

vs.

KENNETH A. WRIGHT

PRELIMINARY STATEMENT OF JESSE E. HALL

State of Texas,
County of Parker—ss.

Jesse E. Hall, being duly sworn, deposes and says that he is a party to the above-entitled interference, and

That he made the invention set forth by the counts of the Interference in the United States; and

(1) That the first drawing of the invention was made April 11, 1941;

(2) That the first written description of the invention was made on April 11, 1941;

(3) That the invention was first disclosed to others on April 7, 1941;

(4) That specimens of the wire abrading elements were made and shown his attorney April 7, 1941; [282]

(5) That the invention was actually reduced to practice on April 16, 1941; and

(6) That the active exercise of reasonable diligence toward reducing the invention to practice began on April 7, 1941.

The Serial Number and filing dates of prior applications in the United States disclosing the invention set forth by the counts of the interference are:

Serial No. 388,891—filed April 16, 1941.

Serial No. 627,013—filed Nov. 6, 1945.

JESSE E. HALL.

Sworn to and subscribed before me this 12th day of May, 1950.

MADELINE JONES,
Notary Public.

My commission expires August 1, 1950. [283]

In the United States Patent Office

Before the Examiner of Interferences

Interference No. 84,411

JESSE E. HALL

vs.

KENNETH A. WRIGHT

AFFIDAVIT OF ALLEN E. HAMBLY

State of California,
County of Los Angeles—ss.

Allen E. Hambly, being first duly sworn, deposes and says: that he is Manager of the Patent Department of Byron Jackson Co., a California corporation; that he has been employed by Byron Jackson Co., since October, 1937; that it is the business of the corporation to manufacture, sell and distribute throughout the world oil well tools for the drilling of wells and the production of oil and gas therefrom; that he is a registered patent attorney registered to practice before the United States Patent Office; that from 1929 to 1937, he was a member of the Examining Corps in the United States Patent Office; that he is a graduate of the Colorado School of Mines.

That he has no interest whatsoever in any controversy existing between Kenneth A. Wright or B and W, Inc., and Jesse E. Hall; that he has carefully considered the attached photographic reproduction of the attached print identified as Figure

26 and made part of this affidavit, which print is entitled "Wire Wall Scratcher with Wires [284] Bent Spirally, Outside Diameter of Scratcher Slightly Greater Than Inside Diameter of Test Well"; that from his knowledge and training, his experience in the Examining Corps in the Patent Office, his experience in the oil well tool manufacturing business, and his experience in the reading of drawings and interpreting of photographs of such devices, it is his belief that said Figure 26 shows a well casing of the type employed in oil and gas wells, and that the two rings marked A and B are secured to the casing by welding; that between the rings A and B there is mounted a collar which can slide longitudinally along the well casing between the stops provided by the rings A and B; that it is clear that the collar will slide axially between the stops, and that since the pipe is round the collar will also turn freely with respect to the casing; that attached to the collar are a plurality of wires each extending spirally around the collar and bent rearwardly from its point of emergence from the periphery of the collar; that it is a well known and long standing practice in the oil tool industry to mount similar sliding collars for axial movement upon a well casing and to limit the axial movement by means of spaced rings secured upon the casing and to support the collar on the casing so that it may turn relative to the casing; that from his position and knowledge of this well drilling art it is his firm belief and understanding that Figure 26 attached hereto and made a part hereof shows that

the collar mounted between the rings A and B, is free to and will turn relative to the [285] casing as the casing is reciprocated in a bore hole of smaller diameter than the free outside diameter of the scratcher wires.

Further affiant sayeth not.

/s/ ALLEN E. HAMBLY.

Subscribed and sworn to before me this 29th day of January, 1951.

[Seal] /s/ IRENE J. KNUDSEN,
Notary Public in and for Said
County and State. [286]

AFFIDAVIT OF JOHN D. SPALDING

City of Washington,
District of Columbia—ss.

John D. Spalding, being first duly sworn, deposes and says: that he is a mechanical engineer; that he is Works Manager for The National Supply Company located at Torrance, California; that he is the patentee of many United States Letters Patent dealing with oil well tools and equipment, as shown by the following list:

1,750,822—Elevator.
1,760,180—Differential and straight brake equalizer for rotary drawworks.

1,782,769—Rotary well drilling machine.
1,850,607—Control for rotary drawworks.
1,875,769—Rotary drawworks back brake assembly.
1,918,501—Water cooled brake rim for drawworks.
1,928,958—Crown block.
1,939,601—Brake band adjusting mechanism.
1,977,020—Self-aligning stuffing box and bearing.
2,008,774—Rotary machine.
2,019,739—Rotary machine.
2,023,033—Control head.
2,031,337—Rotary swivel. [288]
2,041,180—Rotary machine.
2,058,186—Spring hook.
2,058,187—Spring hook.
2,130,401—Rotary machine.
2,172,777—Rotary machine.
2,179,645—Drill stem roller drive bushing.
2,205,269—Rotary machine.
2,235,088—Drawworks.
2,240,741—Drawworks.
2,259,431—Rotary machine.
2,282,615—Brake for drawworks.
2,282,616—Drawworks.
2,282,617—Rotary machine.
2,282,778—Rotary machine.
2,327,467—Rotary drawworks.

2,344,746—Driving bushing.
2,350,079—Roller bearing.
2,488,069—Pump drive.
2,488,070—Weight indicator and drilling line anchor.

That he is a registered patent attorney, registered to practice before the United States Patent Office; that he has since 1931, when he transferred from the Carnegie, Pennsylvania, plant of The National Supply Company to Torrance, California, been particularly interested in patents relating to oil well tools and equipment; that it is the business of The National Supply Company to manufacture, sell and distribute throughout the United States and the world, oil well tools, including casing, pipe and devices for use in conjunction with the handling and drilling of said wells and the production of oil therefrom; that he is not personally acquainted with Kenneth A. Wright, nor is he personally acquainted with Jesse E. Hall; that he has no interest whatsoever in the controversies existing between Kenneth A. Wright, B. and W., Inc., and Jesse E. Hall.

That he has inspected and studied the photographic reproduction of Figure 26 hereto attached and made a part [289] of this affidavit, and which figure is entitled "Wire Wall Scratcher with Wires Bent Spirally, Outside Diameter of Scratcher Slightly Greater than Inside Diameter of said Test Well"; that from his experience in the oil well tool manufacturing business and his experience in the reading of drawings and photographs of such de-

vices, it is his belief that the said Figure 26 considered in connection with the text of A.P.I. paper #901-16-B, shows a pipe commonly referred to in the oil tool industry as a well casing and having rings thereon marked "A" and "B"' secured by welding at two spaced points; that between said rings A and B there is positioned a collar which, considering the nature of the structure, would indicate that said collar is slidably mounted upon said well casing to move between said rings A and B in an axial direction of said pipe; that said Figure 26 shows to him clearly that as said collar is mounted upon the casing between said rings A and B for axial movement, and having freedom of axial movement, said collar is also free to rotate relative to said casing; that attached to said collar are wires positioned spirally around the collar and bent sidewise; that from affiant's position and knowledge of this art, it is his belief and understanding that Figure 26 hereto attached and made a part hereof shows that the collar confined between the rings A and B would be free to rotate relative to the casing as it moves axially of the casing between said rings A and B.

....., JOHN D. SPALDING.

Subscribed and sworn to before me this 31st day of January, 1951.

....., Notary Public. [290]

In the United States Patent Office Before the Examiner of Interferences

Interference No. 84,411

JESSE E. HALL

vs.

KENNETH A. WRIGHT

AFFIDAVIT OF PHILIP H. JONES

State of California,
County of Los Angeles—ss.

Philip H. Jones, being first duly sworn, deposes and says:

That I am a Chemical Engineer having received an A.B. degree from Stanford in 1918 in chemistry and a degree of Engineer in Chemistry from Stanford in 1920; that in the spring of 1949 I retired from the position of Supervisor of Field Research for the Union Oil Company of California; that as such in the fall of 1939 I supervised an extended series of tests that were made at Dominquez Hills near Long Beach, California to determine the factors which influenced the bond between cement and the walls of wells in oil well cementing and to determine the best method for effecting and securing a bond between the formation and the cement.

The tests were made in public and an effort was made to contact and obtain the assistance of any and all parties who might have methods or devices which might improve the effectiveness of oil well

cementing and several [291] dozen engineers, outside the Union Oil Company, observed parts of the operations.

The outside engineers were invited to observe the tests, to suggest methods for testing and in all cases engineers or corporations submitting devices for test were invited to specify the methods employed for testing the particular devices involved. In almost all cases the representatives of the concerns submitting the devices did make these suggestions and the tests were made in accordance with the recommendations of the manufacturers or venders. The results of the tests were made available to all parties who were interested and every effort was made to interest as many outside parties as possible who might contribute to the project and the tests were conducted in an unfenced area open to the public and adjacent to a well traveled public highway. The tests were conducted under my supervision by Union Oil Company personnel in behalf of the Union Oil Company and it was only subsequent to the completion of the tests that a request for the presentation of the results in the form of a paper was made by representatives of the American Petroleum Institute.

Among those present on several occasions to witness the actual conduct of the tests and to observe the results thereof was Mr. Jesse E. Hall, Sr. The conduct of this investigation covered an operating period of approximately four months during the latter part of 1939 and possibly extending into Jan-

uary, 1940. As previously stated, I supervised these [292] tests and took all the photographs used in the final reports. Mr. Dennis Berdine was the engineer in continuous supervision of the project and he had assisting him another engineer and several nontechnical helpers.

As a result of the A. P. I. request and the apparent widespread interest in this investigation, I delivered a paper on the subject at the spring meeting of the Pacific Coast District, A. P. I. Division of Production, at Los Angeles, California, on March 19, 1940. A copy of the A. P. I. report has heretofore been identified as Exhibit 1 to my former Affidavit of March, 1949, in "In re application of Jesse E. Hall, Serial No. 55,619, Continuation-in-Part of Application Serial No. 388,891, filed April 16, 1941, For: Well Bore Scratcher—Protest Under Rule 291" before Primary Examiner. The said Exhibit 1 is a true reproduction of the original paper presented by Mr. Berdine and me and copies of this report were distributed to those attending the A. P. I. meeting on March 19, 1940, held at the Biltmore Hotel in Los Angeles, California. Subsequently the Baker Oil Tool Company, Inc., of Los Angeles, had the paper reprinted for general distribution to their clients and other interested parties throughout the world. Subsequently, that is about two months later, I again delivered the paper in the Shell Hall, Long Beach, to several hundred field and production men of various oil companies. In both presentations, lantern slides were shown of the

equipment used, including the B & W, Inc., scratchers.

In these presentations of this matter both to the A. P. I. meeting and later in the Shell Hall at Long Beach, California, I did not read the paper Exhibit 1 but presented [293] the matter from the slides which are reproduced in the paper and described in full the equipment which was tested and the operation of such equipment, including the B & W scratchers which were tested. I do not remember the exact words that I used in describing them but I did point out that the scratchers were free to move upon the casing between the stop rings and were free to rotate on the casing.

The apparatus which has been described in the paper referred to above, and which is Exhibit 1, was designed and operated to simulate as nearly as possible the conditions believed to prevail during the cementing of an oil well. While depth could not be duplicated, the other dimensions were made large enough to eliminate or minimize "model factor" errors, and the test well diameter and pipe size were about the same as those actually encountered in cementing many oil wells. Four test wells were constructed beside a tank which served as a supporting structure. These test wells consisted essentially of cylindrical canvas bags reinforced externally by perforated pipe 7" in diameter and about 15 feet long. The canvas walls thus simulated the walls of wells drilled through permeable formations. The reinforced perforated pipe was split longitudinally

and provided with flanges to permit its removal without disturbing the set cement and mud cakes deposited inside the canvas bags. The casing used to simulate oil well casing or liner consisted of sections of 3-inch internal diameter pipes suspended inside the canvas bags. Provisions were made to raise, lower and rotate the casings and to circulate mud, water, cement slurry or other fluids through each test well by means of suitable pipes, tanks and [294] pumping facilities. In conducting a test, drilling mud was circulated through the casing to the bottom of the test well, up through the annulus between the outside of the 3-inch pipe (casing) and the canvas walls of the test well. It then overflowed back to the mud sump where it was again picked up by the mud pump and recirculated. This mud circulation was maintained for a period of thirty minutes and then the test well was allowed to stand full of mud for approximately eighteen hours to provide a standing time interval corresponding with that required to remove the drill string and to run the casing in the drilling of a regular oil well. This operation permitted the deposition of a mud cake on the inner wall of the canvas bag similar in nature to the mud cake deposited on a permeable formation in an oil well. The mud cake varied in thickness from about ¼ to ½ inch. The methods of applying the cement and making the observations are clearly described in said Exhibit 1.

Among those furnishing equipment to be used in these tests were B & W, Inc., and the individual

with whom we had most of our dealings was Mr. Kenneth A. Wright who supplied the various wire scratchers shown in Figures 14, 18 and 26 of Exhibit 1, and who instructed us in the proper method for mounting these scratchers on the test casings.

In all cases these scratchers were mounted on the casings so that they were free to rotate on the casing and vertical movement with respect to the casing was limited to about one foot by confining rings welded on the casing above and below the scratcher. [295]

Four types of B & W scratchers were tested. In the first device submitted by Mr. Wright, the wires extended radially outwardly from the scratcher ring and the ends of the wires were quite sharp. The external diameter of the scratcher was slightly larger than the inside diameter of the test well. In our first test with this scratcher, the wires were so sharp that they cut slits in the canvas well walls and permitted the escape of the mud from the well and the first test could not be completed on this account. Subsequently Mr. Wright submitted three other scratchers, which are illustrated in Figures 14, 18 and 26 of said Exhibit 1.

In testing these scratchers, they were raised and lowered during a circulation period of about seventeen minutes for mud and three minutes for water prior to the placing of the cement. During this twenty-minute interval, the casing was raised and lowered a distance of approximately 3½ feet at a rate of about thirty feet per minute. Thus, about

four complete cycles of raising and lowering were completed during every minute's operation, making a total of about 80 complete cycles.

The results of the tests with the B & W, Inc., scratchers were all very favorable in that the mud cakes were almost completely removed from the walls of the test wells and a very complete bond between the cement and the walls of the wells was obtained. [296]

The results of these tests in the form of the cement billets around the test casings with parts of the attached scratchers exposed by chopping away the cement were available for inspection by any interested parties and photographs of these billets are shown in Exhibit 1 as Figures 16, 20 and 27.

The scratchers illustrated by Figure 14 in Exhibit 1 was provided by Mr. Wright with the ends of the stiff wire whiskers bent by 90° turns in such a way as to form a small U section at the end of the wire. The outer portion of the U in contact with the wall of the hole had a length of about ½-inch and was perpendicular to the axis of the pipe. The diameter of the assembly was slightly larger but substantially the same as the inside diameter of the test well. By this means substantially the entire area of the test well was covered by one pass of the scratcher. The mud cake removal was excellent as illustrated by Figure 16 of Exhibit 1.

For another test, Mr. Wright submitted a scratcher in which the ends of the stiff wire whisk-

ers were bent vertically through 180° so that the plane of the resulting close loop was parallel with the axis of the casing, thus the end of each whisker did not contact a portion of the wall of the test well that was appreciably greater than the thickness of the wire itself. The diameter of the assembly was slightly greater but substantially the same as the inside diameter of the test well. Mud cake removal was excellent as illustrated by [297] Figure 20.

In the third device submitted by Mr. Wright, as illustrated by Figure 26, the stiff wire whiskers were bent sideways so that they did not leave the scratcher ring perpendicular but at a slight angle and in addition they were slightly curved in the same direction. The ends of these wires were rounded by application of a welding torch. The outside diameter of this assembly was slightly greater than the inside diameter of the well casing. Mr. Wright advised me that the purpose of the spiral configuration of the stiff wire scratchers was to induce a rotary motion of the assembly in the test well when reversal of direction occurred in raising and lowering the casing. The results of the tests with this device were excellent as shown by Figure 27.

It is interesting to note that with all three scratchers almost complete removal of mud cake was obtained and a very effective bond between the cement and the walls of the test well was obtained.

It is further noteworthy that the mud cake removal by the scratchers of Figures 18 and 26, of Exhibit 1 with the stiff wire whiskers arranged to sweep no appreciably greater area of the canvas than the thickness of the wire was as good as the mud cake removal where the wires were bent so that a considerable length of wire was parallel with and in contact with the walls of the test well. This could only have resulted from the fact that the scratchers rotated on reversal of direction of the casing motion at the ends of the strokes. The rotary drilling mud which is used consists substantially of a viscous suspension of clay in water and deposits a tough, [298] tightly adhering cake of mud of a cheese-like consistency against the wall of the hole, which cannot be removed mechanically except by full coverage of the wall of the hole. Thus, if these scratchers had not rotated, it seems reasonably certain that the ends of the wires would have cut grooves in the mud cake and the wires would have traveled in these grooves without sweeping the walls of the test well and would not have provided the substantially complete mud cake removal and excellent bond with the cement that was observed. In my opinion the B & W scratchers of Figures 18 and 26 which were used in these tests effected mud cake removal due to the rotation which occurred at each end of the stroke where the direction of travel of the scratcher was reversed. One of the reasons for the spacing of the retaining rings on the casing is to allow a period of movement of the scratcher ring on the casing at the time of re-

versal, during which movement the rotation can and does take place. Even where the scratcher wires extend substantially radially from the ring, it is obvious that if these wires are greater in length than the distance from the ring to the wall of the hole a reversal in direction of vertical motion will cause the inner end of the wire whisker to exert considerable pressure on the scratcher ring itself and that the resultant component of this force must necessarily be tangential to the ring on the casing for at least a significant portion of the wires involved. Once motion is induced, the spring action should release additional forces of other wires which would still further tend to rotate the scratcher. In any case, the results of the tests show clearly that the scratchers had rotated in that the wires did [299] not form grooves in which they ran continuously but almost completely swept the walls of the well free of mud cake. This latter fact was evident from the very efficient bond obtained between the cement and the well wall in each of these test operations.

As a result of these tests, I recommended to the Union Oil Company the use of the B & W scratchers in Union Oil Company cementing operations and the B and W scratchers were adopted and used by the Union Oil Company from the time of my recommendation until at least the time of my retirement from the company and I am informed they are still being used thereafter.

I am in no way interested in any controversy having to do with the manufacture, use or sale of

B & W, Inc., scratchers, any scratchers that may be made by Jesse E. Hall, Sr., or any company with which he is connected, or any other manufacturer of scratchers.

/s/ PHILIP H. JONES.

Subscribed and sworn to before me this 26th day of January, 1951.

[Seal] /s/ FRANCES L. RICHMOND,
Notary Public in and for the County and State Above Named.

My Commission Expires March 7, 1954. [300]

In the United States Patent Office

Before the Examiner of Interferences

Interference No. 84,411

JESSE E. HALL

vs.

KENNETH A. WRIGHT

AFFIDAVIT OF W. E. McCLURE

State of California,
County of Los Angeles—ss.

W. E. McClure, being first duly sworn, deposes and says: That he is a Notary Public in and for the County of Los Angeles, State of California.

That he is the Notary Public before whom a deposition of Jesse Elmer Hall was taken on July 15, 1948, at 811 West Seventh Street, Los Angeles, California, in those certain proceedings entitled "In the United States District Court for the Southern District of California, Central Division, Jesse E. Hall, Plaintiff, vs. Kenneth A. Wright and B. and W, Inc., a California Corporation, Defendants, Civil Action No. 7839-WM":

That Jesse Elmer Hall, whose deposition was taken, is the Jesse E. Hall, above named.

That during said deposition and on cross-examination by Thomas E. Scofield, attorney for Jesse E. Hall, plaintiff, in response to the following questions, gave the following answers. [301]

Affiant administered the oath to Jesse E. Hall prior to the taking of the depositions and the giving of the following answers.

Cross-Examination

By Mr. Scofield:

Q. You were questioned this morning about some tests that were made the Union Oil Company in 1939 or 1940. Just where were those tests made, Mr. Hall?

A. It was on a Union Oil Company lease out here at what they call Dominquez Hill.

Q. Do you know what the purpose of the tests were?

A. Yes, it was an A.P.I., it was being made for the purpose of the A.P.I. Mr. Phil Jones was the

head of it, and which was an engineer for the oil companies on cementing devices and methods.

Q. Were any of your tools used out there?

A. That is right. The tool that I had been using was exhibited out there and run, and several of the tests, with a very high success under the method of abrading the well bore and getting a cement bond to it—to the body of the well, the formation.

Q. Who had supervision of these tests?

A. Engineers from the Union Oil Company furnished the ones they looked over. It was kind of like you might call them referees, but almost every company that furnished their own device was there to assist the fellows in running them. There were many devices there that had never been sold or never been used, and which give considerable trouble, and they would have to take their well and remove them, and [302] caused considerable delay. Some of us fellows had come up and had been running our tools would have to wait. They only had one little dummy well they were using for that, which went on there some months.

Q. As to the centralizers that were used out there, did you personally conduct the tests, or were they conducted by others than yourself?

A. They were conducted by others, but personally I had to do with the way they were installed, and they were moved according to my belief.

Q. Your instructions? A. That is right.

Q. Were you there when your tools were run?

A. I was.

Q. And did you see them run?

A. I saw them run in two instances.

Q. Did you read the report that was made on your tools? A. I did.

Q. You have indicated that there were some tools that were run out there that they had difficulty with. What were those?

A. B and W scratchers. They had very much trouble with that. They brought it out in a state, they only had a few of them made and they could not get it to work in the hole.

Q. Did you see this test?

A. I saw that test, but they went away.

Q. Who went away? [303]

A. I don't know the men that had them there, and they came back. The next time I saw the scratchers they had some bends in them. The first time they came out they had—the spring was straight and the next time they came back they had them twisted around and some eyes twisted in them.

Q. What was the difficulty that they had with them upon the first test?

A. They couldn't reciprocate them in the hole. They could not pull them back up to work them to get the mud off of the bore of the well.

Q. Why not?

A. Because they wouldn't reverse.

Q. Then what did they do to them, did you say?

A. They went and twisted them. At one time they twisted and made an eye and twisted them down smaller than the bore of the well they had them in, so that they could go in, and that exhibit is

run in there. That is one test. Then another, they went——

Mr. Caughey: What is he talking about?

Q. (By Mr. Scofield): You are talking about the Jones Report which is here on the table?

A. That is right. And another time they went and welded some little balls (bolts) on the end to try and make them spread back up the hole so that they could—they wouldn't reverse in the hole, so that they couldn't work their pipe to clean it.

Q. Let us first consider the first test when the whiskers or the wires, as I understand your testimony, were extended straight out radially from the collars. What was the result of that test? [304]

A. They didn't make the test, because they rammed it down in the well and they had to tear their well all down. They had a dummy well they would pull apart, and taken some time. I believe it was the following week that I seen the test with the crooked wires that they have, and——

Q. Is it your present testimony that the original scratchers that were furnished by B and W that were run in the well were inoperable?

A. That is right.

Q. Because they stuck in the well?

A. Yes, that is right.

Q. And then those were taken away and subsequently they came back with some scratchers on which the ends of the wires had been doubled back?

A. That is right.

Q. Did you see the test on the second batch of scratchers that were doubled back? A. I did.

Q. Were you personally there and saw it?

A. I personally was there and inspected them and——

Q. Did you see the man who was running that test? A. It was a fellow, an assistant.

Q. A fellow assistant?

A. The fellow that was assisting them in running them was a Union Oil Company man.

Q. Do you know what the result of that test was?

A. Well, the result, as pointed out in this A.P.I. meeting, I don't believe it shows a bond.

Q. Bond between what?

A. Bond between the cement and the bore of the well. [305]

Q. And then what happened subsequently?

A. They went and made another bunch. The same time we had to wait on this well. They made another bunch and they welded little balls (bolts) on the end of their spring fingers.

Q. Did you see those run?

A. I seen those run.

That during the same deposition and during examination by R. E. Caughey, attorney for Kenneth A. Wright in said federal action pending in the Southern District of California, the plaintiff gave the following answers in response to the following questions:

Q. And you saw the Wright scratcher being demonstrated there and on the casing; is that correct? A. That is right.

Q. And was a cementing job simulated in that demonstration?

A. Yes, they done a number of cementing jobs.

Q. And they tested various devices; is that correct? A. That is right.

That the reason for placing the word "bolts" in parentheses after the word "balls" on pages 4 and 6 of this affidavit is that in first transcribing the stenographic notes this affiant misread his notes and used the word "bolts"; further and more careful reading of the notes made it apparent that the correct word was "balls"; however so that there would be no misunderstanding the word "bolts" was so placed in parentheses.

Further affiant sayeth not.

/s/ W. E. McCLURE.

Subscribed and sworn to before me this 30th day of January, 1951.

[Seal] /s/ BEN A. BELL,
Notary Public in and for the County and State Above Named. [306]

In the United States Patent Office

Before the Examiner of Interferences

Interference No. 84,411

JESSE E. HALL

vs.

KENNETH A. WRIGHT

AFFIDAVIT OF KENNETH A. WRIGHT

State of California,
County of Los Angeles—ss.

Kenneth A. Wright, being first duly sworn, deposes and says:

That he is a resident of the City of Los Angeles, State of California, and resides at 130 North Van Ness Avenue, Los Angeles, California, and that he is Vice-President and Secretary of B and W, Inc., a California corporation.

That he had constructed and personally presented to Mr. Philip H. Jones each of the scratchers illustrated in Figures 14, 18 and 26 of Exhibit 1 to the Affidavit of Philip H. Jones of March, 1949, filed with a Protest Under Rule 291 in the matter entitled "In re Application of Jesse E. Hall, Serial No. 55,619, Continuation-in-Part of Application Serial No. 388,891, Filed April 16, 1941, For: Well Bore Scratcher," said Exhibit 1 being a paper entitled "Oil Well Cementing Factors Influencing Bond Between Cement and Formation" prepared by Philip H. Jones and Dennis Berdine and pre-

sented on March 19, 1940, at a Sectional Meeting of the American Petroleum Institute at Los Angeles, California. [307]

That he personally instructed said Philip H. Jones in the manner of use of each of said scratchers as shown by the said figures. That in addition to the three scratchers shown by Figures 14, 18 and 26 of said Exhibit 1, he presented to Philip H. Jones another or additional scratcher in which the wires extended substantially radially outwardly in a straight line from the center of the supporting ring; that the wires were sharp on their ends in said scratcher. This scratcher was the one first presented to said Philip H. Jones for use at the test demonstrations being conducted at Dominquez Hills, near Long Beach, California, during the latter part of 1939.

That all four scratchers, including the one with the radial wires above identified and those shown in Figures 14, 18 and 26 of Exhibit 1, were mounted upon the casing between retaining rings which were welded to the casing approximately a foot apart so that the supporting ring of the scratcher could move in a direction longitudinally of the pipe; that with respect to all four of the scratchers so identified, the wire whisker supporting rings or collars were freely mounted on the casing. The collars were circular and were mounted on a circular casing and were positioned freely so that they could not only move longitudinally of the casing but could rotate thereon. The internal diameter of each of the collars was

sufficiently greater than the external diameter of the casing so as to permit free relative rotation of the collars on the casing.

These four scratchers were used by the Union Oil Company under the direction of Philip H. Jones in the tests being conducted upon the improvement of procedure of cementing [308] oil wells and were used in simulated wells made up of cylindrical canvas bags positioned in perforated casings, which perforated casings were made in flanged half sections so as to permit their removal from the outside of the canvas bags. The precise measurements, sizes and lengths of the simulated wells are fully set forth in said Exhibit 1. The canvas bag was used in these tests to simulate permeable strata of a well bore so that well drilling mud would be deposited upon the inner surface of the said canvas bag as the water of said mud filtered therefrom through the canvas bag and through the perforations of the outer encircling casing to simulate in all respects the building up of a mud cake upon the permeable formation of an oil well. In this canvas bag well an inner nonperforated casing was used of a diameter sufficiently less than the diameter of the canvas bag to form an annulus between the canvas bag and the inner casing. Mud was circulated through the inner casing to the bottom of the well up and through the annulus and out over the top of the canvas bag simulating mud circulation in a well. After the circulation was continued for a certain period of time as shown in Exhibit 1, the circulation of the mud was stopped and

the mud allowed to stand in the annulus of the well for a period of time corresponding with the time required in an actual well to withdraw the drill pipe and bit and thereafter to run the casing to the selected depth. During this period of time the mud cake continues to build up upon the inner wall of the canvas bag and increases the thickness, reaching a thickness as shown by Exhibit 1 of one-fourth to one-half inch. [309]

That during the test of the scratcher having the radial wires with the sharp ends, the wires upon reciprocation of the internal casing cut through the canvas bag making it impossible to complete that test; that thereafter affiant instructed that the ends of the wires of the radial wire scratcher be bent upon themselves in the form shown in Figure 14. A procedure was thereupon adopted for the testing of the scratchers so that during the mud circulation the scratchers were raised and lowered during a period of 17 minutes after which the mud circulation was discontinued and water was circulated through the well for a period of three minutes during continued raising and lowering of the scratchers. During this 20-minute test period the inner casing was raised and lowered a distance of approximately 3½ feet at a rate of 30 feet per minute, thus reciprocating the scratchers during each test through approximately 80 cycles of reciprocation for the 20-minute period. After the water circulation step was completed, a cement slurry was circulated in the same manner

through the inner casing and up into the annulus surrounding the inner casing. During this cement circulation the inner casing was reciprocated at the same rate with the scratchers positioned thereon. The cement slurry circulation was continued for a period of time sufficient to allow a reciprocation of the scratcher during the cementing operation of substantially two cycles of reciprocation.

The scratcher of Figure 14 operating through the test procedure as above identified removed the mud cake from the inner surface of the canvas bag and the cement core was taken from the well by removing the outer flanged casing, as is shown in Figure 16 of Exhibit 1, and a part of the cement core thus produced was cut away to show the scratcher in [310] position within the cement. The same test procedure was carried through with the scratcher as shown in Figure 18 of Exhibit 1. Affiant instructed Philip H. Jones in the bending of the stiff wire whiskers of the scratcher as shown in Figure 18. The cement core formed in the test using the scratcher of Figure 18 is shown in the second core (from left to right) of the photograph Figure 20 of Exhibit 1.

The scratcher shown in Figure 26 has the wires bent sideways, as affiant instructed Philip H. Jones, and the ends of the wires were formed as a ball by puddling the metal at the ends of the wires. The stiff wires were of a length in excess of 1¾ inches. They extended radially from the supporting collar a distance of substantially ½ inch and were then

bent sideways so that the effective length of the wires extending outwardly from the collar was in excess of 1¾ inches so that the outside diameter of the scratcher wires was greater than the inside diameter of the test well.

The same test procedure was followed using the scratcher of Figure 26 as with the other scratchers, and the cement core formulated in this test is shown in Figure 27 of Exhibit 1. In each of the test scratchers of Figures 14, 18 and 26 the ends of the wires were formed as illustrated and the ball formation was formed thereon to prevent the cutting of the canvas experienced with the first scratcher tested. In each of the tests conducted with the scratchers of Figures 14, 18 and 26 a very effective bond was formed between the cement and the canvas bag due to the substantially complete removal of the filter cake from the inside of the canvas bag. The horizontally appearing lines shown in the resulting cores from the tests were formed as a result of the reciprocation of the wire scratcher during the cementing operation and by the [311] fact that during the circulation of the cement slurry the scratchers were reciprocated.

In a scratcher, as for example of the type shown in Figure 26 or in Figure 18 or in any scratcher free to rotate upon a casing between stops, the scratcher rotates at the commencement of each vertical stroke and the rotation of the collar is such that during the reversal of inclination of the wires the wire ends move relative to the wall of the hole to a new posi-

tion and thereafter the scratcher and the wires connected therewith move longitudinally of the well hole without further rotation relative to the well wall or casing.

In the scratchers of Figures 18 and 26 the scratchers each rotated on the casing at the beginning of each vertical stroke of reciprocation. The casing itself was not rotated. The rotation of the scratcher collars was caused in each instance during reversal of direction of movement of the scratchers by the force imparted to the collars from the wires in reversing their direction of inclination. This reversal produces a thrust upon the collar imparted thereto by each wire at the time of the change of its inclination and the degree of rotation becomes greatest at the time the wires are substantially horizontal. The force imparted by the wires to the collar to cause rotation results in a tangential component of force being exerted on the collar during this reversal. The effect of rotation of the collar is to change the position of contact between the ends of the stiff wire scratchers and the inside wall of the well. In each of these tests the mud cake was effectively removed from the inside wall of the canvas bag and a very efficient bond was formed between the canvas bag and the cement. [312]

As a result of the tests conducted by Mr. Philip H. Jones, a recommendation to the Union Oil Company was made to use affiant's scratchers in the cementing of oil wells. The Union Oil Company immediately adopted affiant's scratchers and continued

from that date to utilize the scratchers of affiant up to and including the present day.

Exhibit 1 was later reproduced in the Petroleum World, Issue of June, 1940.

/s/ KENNETH A. WRIGHT.

Subscribed and sworn to before me this 30th day of January, 1951.

[Seal] /s/ IRENE J. KNUDSEN,
Notary Public in and for the County and State Above Named. [313]

In the United States Patent Office

Interference No. 84,411

KENNETH A. WRIGHT

vs.

JESSE E. HALL.

MOTION TO DISMISS

Hon. Commissioner of Patents,
Washington, D. C.

Sir:

The party Hall moves the dismissal of Wright's request to reconsider the Examiner's decision on Motions dated December 15, 1950, on the following grounds:

1. The decision in question ruled dissolution of this interference and the request for reconsideration solicits no change in that ruling.

2. Since the request for reconsideration agrees that dissolution of the interference is correct and proper, the points presented to support the request are moot and academic insofar as the interference is concerned.

3. That the so-called request for reconsideration is in effect and purpose nothing but a request that the Patent Office disallow to Hall after dissolution of the interference claims allowed to Hall by the Board of Appeals.

Respectfully submitted,

/s/ THOS. E. SCOFIELD,
Attorney for Hall.

/s/ HENRY VAN ARSDALE,
Associate Attorney.

February 6, 1951. [314]

It is certified that a copy of the foregoing Motion to Dismiss has been forwarded by first-class mail to Lyon & Lyon, 811 W. Seventh Street, Los Angeles 14, California, counsel for the party Wright, on February 6, 1951.

/s/ THOS. E. SCOFIELD. [315]

Paper No. 42

Department of Commerce
United States Patent Office
Washington

Interference No. 84,411

JESSE E. HALL

vs.

KENNETH A. WRIGHT.

Please find below a communication from the Examiner in this case.

/s/ JOHN A. MARZALL,
Commissioner of Patents.

Lyon & Lyon,
811 West Seventh St.,
Los Angeles 14, Calif.

EXAMINER'S ANSWER TO REQUEST FOR RECONSIDERATION

The motion, filed by the party Hall on Feb. 6, 1951, moving the dismissal of the party Wright's request to reconsider is denied. Rule 244 (c) expressly provides that petitions for reconsideration or modification of a decision on motions may be filed within twenty days thereof. Since the party Wright's petition or request was timely, the petition will be considered.

If the party Hall desires to file briefs or memorandum replying to the party Wright's request for reconsideration, they must be filed on or before April 30, 1951.

EXAMINER, DIV. 49.

[Stamped]: Mailed March 19, 1951, U. S. Patent Office.

[Stamped]: Received Lyon & Lyon. [316]

[Title of District Court and Cause.]

AFFIDAVIT OF KENNETH A. WRIGHT

State of California,
County of Los Angeles—ss.

Kenneth A. Wright, being first duly sworn, deposes and says: That he is one of the defendants above named; that he is the Kenneth A. Wright named in the agreement, Exhibit 34, heretofore entered in evidence in this cause of action; that he is the Kenneth A. Wright named as a party to Interference 84,411 now pending before the United States Patent Office and which interference involves the application for Letters Patent of Jesse E. Hall, Serial No. 55,619, referred to in the "Material Facts Admitted or Without Substantial Controversy" ac-

companying [317] "Plaintiff's Motion for Summary Judgment" and identified therein as Plaintiff's Exhibit 69 to the Affidavit of Thomas A. Scofield of March 17, 1951; that following the execution of the agreement of September 15, 1944, affiant was not, and to his knowledge and belief B & W, Inc., defendant, was not, at any time advised pursuant to the provisions of Paragraph 6 of the Agreement, Exhibit 34, nor was affiant, or B & W, Inc., to affiant's knowledge and belief, supplied with copies of any proceedings had in connection with the prosecution of the application, Serial No. 388,891, and affiant and B & W, Inc., were not at any time advised that the said application, Serial No. 388,891 was abandoned by Jesse E. Hall, plaintiff, until after it was abandoned. The said application, Serial No. 388,891, was abandoned November 8, 1945, and not on November 9, 1946, as set forth under Paragraph 12 of the "Material Facts Admitted or Without Substantial Controversy" filed in connection with Plaintiff's Motion for Summary Judgment.

Affiant and B & W, Inc., had no knowledge of the filing of application, Serial No. 627,013, by Jesse E. Hall until after the abandonment of the application, Serial No. 388,891. That affiant, and no one on behalf of B & W, Inc., had access to the application, Serial No. 627,013, to determine its disclosure and contents until long after the abandonment of the application, Serial No. 388,891.

That the application, Serial No. 627,013, filed by Jesse E. Hall was never assigned to affiant or to

B & W, Inc. The application, Serial No. 627,013 (Plaintiff's Exhibit 3), as will be apparent therefrom, was as filed directed to an entirely different invention from application, Serial No. 388,891, and each and all of the claims of the said application as filed was limited to tangentially extending wires, to wit: "* * * said wires projecting at an angle from the sleeve simulating the trajectory [318] of bodies thrown from the sleeve where the sleeve rotated rapidly." Thus said application was not a continuation-in-part of application, Serial No. 388,891. The application, Serial No. 627,013, as filed in the United States Patent Office, claimed only tangentially extending wires or whiskers and no claim as solicited in said application, Serial No. 627,013, would read upon or cover any invention disclosed in the application, Serial No. 388,891.

Plaintiff, Jesse E. Hall, in said application, Serial No. 627,013, never took oath to having made an invention in common with the disclosure of the application, Serial No. 388,891. The invention to which the application, Serial No. 627,013, was directed was the purported improvement in scratchers where the wire scratchers extended tangentially from the supporting ring.

From and after affiant's discovery of the abandonment of the application, Serial No. 388,891, plaintiff, Jesse E. Hall, has failed and refused to pay royalties to affiant or B & W, Inc., for any royalty period following the said discovery of the said abandon-

ment, and has stated that he would only continue to pay such royalties and assign the application, Serial No. 627,013, to affiant pursuant to the provisions of Exhibit 34 upon the execution by affiant and B & W, Inc., of a supplemental agreement submitted to affiant in August of 1946. (See Plaintiff's Exhibits 23, 24 and 25.)

That affiant is informed and believes that the application, Serial No. 627,013, does not in fact or law constitute a continuation-in-part of the abandoned application, Serial No. 388,891. That affiant is informed and believes that the application, Serial No. 55,619, Plaintiff's 69 hereto, is not and does not in fact or law constitute a continuation-in-part [319] of application, Serial No. 388,891, or the application, Serial No. 627,013. That affiant believes that the application, Serial No. 627,013, was filed by Jesse E. Hall because the form of structure being made by Hall at the time the said application was filed was of the tangential wire type and not of the type disclosed in the application, Serial No. 388,891. Affiant is further informed and believes that the application, Serial No. 627,013, was abandoned by plaintiff, Jesse E. Hall, because said application disclosed only in its drawings and specification the tangential wire form of scratcher and that said tangential form of scratcher had been manufactured and sold by Hall for many years prior to the filing of the said application, Serial No. 627,013, and that the said application was barred by law.

Affiant believes that the said Jesse E. Hall knew

at the time that he filed the said application, Serial No. 627,013, that said application was barred by law and that it was fraudulent and constituted perjury for Jesse E. Hall to take the oath to the said application setting forth that he did not know and did not believe that the invention claimed in said application has been in public use or on sale for more than one year prior to the filing of the said application; that as a result of the failure of said Jesse E. Hall, plaintiff, to abide by the terms of Paragraph 6 of the Agreement, Exhibit 34, affiant is informed and believes that he has lost all right, title and interest to any invention disclosed in the application, Serial No. 388,891, and that no valid patent can be issued for such invention and therefore that the consideration flowing to affiant under said agreement has failed and ceased due to the failure of Jesse E. Hall to abide by and carry out the trust imposed upon him by the provisions of Paragraph 6 of Exhibit 34. [320]

It is affiant's belief that Hall abandoned the application, Serial No. 388,891, and filed the application, Serial No. 627,013, to the tangential form of wire scratcher and sought a patent thereon for the sole purpose of avoiding the payment to affiant of the royalty required to be paid under the provisions of the contract, Exhibit 34. That application, Serial No. 627,013, was abandoned by Jesse E. Hall without the knowledge, consent or approval of defendants, or either of them; that the application, Serial No. 627,-013, was abandoned in accordance with the belief of

affiant because said application, its disclosure by its drawings and by its specifications were limited and directed to the tangential form of wire scratcher and no valid patent could be obtained thereon and when this fact became apparent to plaintiff, Jesse E. Hall, he abandoned the application, Serial No. 627,013, thereby admitting and agreeing that no valid patent could be obtained thereon and then, without the knowledge, consent or approval of defendants, or either of them, the said Jesse E. Hall did file in the United States Patent Office the application, Serial No. 55,619; that the specification of the application, Serial No. 55,619, was amplified and changed and altered in material respects differing from the application, Serial No. 627,013, to broaden said application and to change and alter the position of said Jesse E. Hall before the Patent Office in an effort to eliminate from the said specifications the limitations contained in the application, Serial No. 627,013, with respect to the tangential wire form of scratcher. Thereupon, said Jesse E. Hall did endeavor, without right, and illegally, to make the said application, Serial No. 55,619, correspond to the disclosure of application, Serial No. 388,891, which had long since been abandoned. That affiant believes and is so informed that the application, Serial [321] No. 55,619, is not a continuation-in-part of either the application, Serial No. 627,013, or the application, Serial No. 388,891, in law and that the application, Serial No. 55,619, is not entitled as its filing date to the filing date of the application, Serial No. 388,891, and therefore the said application, Serial No. 55,619, can

not stand because of the prior manufacture, use and sale of the structures therein disclosed and that said application is without proper standing before the United States Patent Office.

The claims purportedly allowed to plaintiff, Jesse E. Hall, in said application, Serial No. 55,619, were granted to said Jesse E. Hall because the claims therein purportedly granted define that the scratcher is rotatably mounted upon the casing in use and rotated during reversal of rotation. The Board of Appeals in its decision, Exhibit 69, page 131, stated:

"Claims 23, 24 and 31, however, are each limited to a construction in which all the whiskers are not only at an angular inclination to the radius of the casing drawn through the projection point, but are at such an angular inclination having additionally a sidewise direction and requiring that the whiskers project in substantially the same angular relation from the support. This is the structure whereby applicant attains the function disclosed in his application of rotating the support around the casing during the scratching operation and we do not find in the prior art this structure or any equivalent structure whereby this function could be attained. The Petroleum World publication does not clearly disclose that the support, which seems to be illustrated in Fig. 26, is rotatably mounted on the [322] exterior of the casing and, although it may be that in the actual structure reproduced in Fig. 26, the support was made reciprocable on the casing and

also rotatable thereon, this cannot be determined from the record before us."

In affiant's Petition for Reconsideration now pending before the Patent Office, it is established beyond question that Jesse E. Hall saw the structures as exhibited in Fig. 26 of the Petroleum World publication referred to by the Board of Appeals in its decision above quoted; that he saw the said structures operated as set forth in the publication, the Petroleum World; that he knew that said structures were rotatable and that said structures did, as they were operated, and observed by said Jesse E. Hall, rotate on the casing so as to remove the mud cake from within the well so that the efficient bond was ultimately obtained between the cement and the well formation.

Plaintiff, Jesse E. Hall, therefore, in arguing to the Board of Appeals that the Petroleum World publication did not disclose scratchers which were rotatably mounted upon the casing to have the mode of operation as thus defined, did not in good faith set before the Board of Appeals facts that were material to the Board's consideration of said claims but, on the contrary, withheld such information from the Board of Appeals.

The allowance of claims 23, 24 and 31 in application, Serial No. 55,619, affiant is informed and believes, is predicated upon the inability of the Board of Appeals to determine as a matter of fact that the Petroleum World publication does show the scratchers mounted rotatably upon the casing and

mounted to reciprocate thereon with reference to the casing [323] and had that fact been made known to the Board of Appeals it is apparent that claims 23, 24 and 31 would not have been allowed by the Board of Appeals. This asserted distinction between the disclosure of the Petroleum World as to the rotatability of the scratchers on the casing was urged to the Board of Appeals by plaintiff, Jesse E. Hall, as is apparent from

> "All this discussion, however, with respect to the date of the Jones & Berdine publication is probably academic, since applicant contends that there is no disclosure in the article which anticipates the Hall invention."
>
> (Brief for Jesse E. Hall before the Board of Appeals, Page 104 of Exhibit 69.)

Affiant and B & W, Inc., were not parties to, were not present at, and had no knowledge of the appeal taken to the Board of Appeals of the United States Patent Office, were never furnished a copy of the Brief for Jesse E. Hall, or any papers in connection with the appeal of Jesse E. Hall, and were not notified thereof, all contrary to the provisions of Paragraph 6 of Exhibit 34. Affiant has no representative present, and defendant, B & W, Inc., had no representative present, at the hearing of the appeal before the Board of Appeals, and had no knowledge of the fact of such an appeal.

Affiant believes and therefore asserts that except for the failure of Jesse E. Hall, plaintiff, to abide by the terms of Exhibit 34, and to the provisions of

Paragraph 6 thereof, and that because of the failure of Jesse E. Hall to properly prosecute the application, Serial No. 388,891, before the United States Patent Office, that affiant and B & W, Inc., have lost all consideration flowing to them under said contract [324] and that Jesse E. Hall has so manipulated the prosecution of the invention assigned to affiant as to destroy forever all consideration moving unto affiant under the provisions of Exhibit 34 and that had said Jesse E. Hall made known to affiant or his representatives the facts with respect to the prosecution of the said applications and had, as required, supplied affiant or his representative "with copies of any and all proceedings had in connection with said Hall applications as and when they occur," that affiant could then have, and would have been in position to protect his interests under the contract, Exhibit 34, and that the failure of the said Hall has destroyed now and forever all value of the contract to affiant and defendant, B & W, Inc.

At no time had plaintiff, Jesse E. Hall, assigned to, or offered to assign to, affiant or B & W, Inc., the application, Serial No. 55,619.

/s/ KENNETH A. WRIGHT.

Subscribed and Sworn to before me this 6th day of April, 1951.

[Seal] /s/ IRENE J. KNUDSEN,
Notary Public in and for Said County and State.

Receipt of Copy acknowledged.

[Endorsed]: Filed April 6, 1951. [325]

[Title of District Court and Cause.]

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

This cause having come before the court for hearing on motions of both plaintiff and defendants for summary judgment; and the motions having been argued and submitted for decision; and it appearing to the court:

(a) that the language of the license agreement of September 15, 1944, renders uncertain the intention of the parties as to the extent of their rights and obligations thereunder, thus requiring the instrument to be construed [see St. Paul Plow Works vs. Starling, 140 U. S. 184, 195-196 (1891); Westinghouse Co. vs. Formica Co., 266 U. S. 342, 350-353 (1924); Baker Oil Tools vs. Burch, 71 F. 2d 31, 35 (10th Cir. 1934); Swan Carburetor Co. vs. General Motors Corp., 42 F. 2d 452, 454 (N.D. Ohio 1927)] in [327] the light of "the circumstances under which it was made" [see Cal. Code Civ. P. §§ 1860, 1864; Cal. Civ. Code §§ 1639, 1642, 1647, 1649, 1650, 1654; Woodbine vs. Van Horn, 29 Cal. 2d 95, 104, 173 P. 2d 17, 22 (1946)]; and

(b) that the pleadings and affidavits on file show the existence of genuine issues as to the circumstances under which the license agreement of September 15, 1944, was made, and therefore summary judgment cannot be granted [Fed. R. Civ. P. 56(c)];

It Is Now Ordered that plaintiff's motion for summary judgment filed March 30, 1951, be and is hereby denied, and that defendants' motion for summary judgment filed April 6, 1951, be and is hereby denied.

It Is Further Ordered that the Clerk this day serve copies of this order by United States mail on the attorneys for the parties to this cause.*

May 24, 1951.

/s/ WM. C. MATHES,
United States District Judge.

[Endorsed]: Filed May 24, 1951. [328]

United States District Court, Southern District of California, Central Division

Civil Action No. 7839-WM

JESSE E. HALL,

Plaintiff,

vs.

KENNETH A. WRIGHT, and B & W, INC., a California Corporation,

Defendants.

INJUNCTION

This matter having come on for hearing before the Honorable William C. Mathes, District Judge,

---

*The case is now set for further trial at 10 a.m. on June 19, 1951.

on this 25th day of January, 1952, and the parties having been represented by their counsel and it having been established before this court that the plaintiff has sent to members of the trade the following letter:

"Thomas E. Scofield.

"1325 Rialto Building,
"Kansas City, Missouri.
"January 12, 1952.

"Registered

"Attention of Purchasing Department. [397]

"Gentlemen:

"Your company is purchasing for the conditioning of oil wells prior to cementing tools, known as 'Nu-Coil' and 'Multiflex' scratchers offered by B & W, Inc., of Long Beach, California, their dealers, agents and by some of the supply stores. Such scratchers are exclusively licensed to my client, Mr. Jesse E. Hall, of Weatherford, Texas.

"For each Nu-Coil and Multiflex scratcher purchased after January 1, there is due and payable to Mr. Hall a royalty of $2.50. Please remit these royalties to Mr. Jesse E. Hall, 900 Lamar Street, Weatherford, Texas, by the 10th of each month for scratchers purchased the previous month, accompanying such royalty payments with a statement containing:

"(a) The number of units purchased.
"(b) The type (Nu-Coil or Multiflex).

"(c) The size of each unit.

"(d) The source from whom purchased.

"(e) The well name and location where the scratchers are to be used.

"Very truly yours,

"/s/ THOS. E. SCOFIELD."

and it appearing that the defendants have caused to be placed on invoices the following statement:

> "This Invoice includes a royalty of sixty cents ($.60) per scratcher for each scratcher sold and extends to the purchaser a license to utilize the scratchers sold in practicing the inventions of Letters Patent Nos. 2,338,372 and 2,392,352 and under claims numbered one through nine, inclusive, and [398] claim fifteen of Letters Patent No. 2,374,317 or either or any thereof."

It Is Hereby Ordered that plaintiff and defendants, or their agents, servants, attorneys and all parties in privy with them or either of them, be henceforth, and hereby are, enjoined from doing either of the matters hereinabove set forth or sending out any other communication to the trade with respect to any claim or claims involved in this action or any demand or demands arising out of any claim involved in this action unless the communication, whether oral or written, be accompanied by a statement that the claim or demand is based upon a claim or demand which is involved in litigation in this action describing fully such claim or demand, stating

that the validity of any such claim or demand is dependent upon the outcome of this litigation and finally, that any such communication, whether written or oral, be accompanied by a copy of this injunction and that this injunction shall remain in effect until further order of this court.

And It Is Further Ordered that a copy of this injunction be mailed by plaintiff to each person to whom the letter hereinabove quoted was sent by the plaintiff and that the defendants mail a copy of this injunction to every person to whom one of the invoices has been sent or rendered upon which the said hereinabove-quoted notice has been contained.

Dated January 25, 1952.

So Ordered:

/s/ WM. C. MATHES,
United States District Judge.

Approved as to Form and Substance:

/s/ THOS. E. SCOFIELD,

/s/ PHILIP SUBKOW,
Attorneys for Plaintiff.

LYON & LYON,

/s/ LEWIS E. LYON,
Attorneys for Defendants.

Receipt of Copy acknowledged.

[Endorsed]: Filed January 26, 1952.

Judgment docketed and entered January 26, [399] 1952.

[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT, FINDINGS OF FACTS ADMITTED OR WITHOUT SUBSTANTIAL CONTROVERSY, AND PROPOSED CONCLUSIONS OF LAW

Findings of Fact

I.

That plaintiff Jesse E. Hall and defendant Kenneth A. Wright for himself and on behalf of defendant B & W, Inc., entered into an agreement dated September 15, 1944 (Pltf's Ex. 34 in this litigation and also Ex. D to original complaint).

II.

That said agreement contains as paragraph 7 thereof the following:

"7. It is further agreed by and between the parties hereto that the party Wright shall, at his discretion, take such steps as may be [404] necessary and possible to protect the inventions involved in the aforementioned interferences in countries foreign to the United States where oil well equipment is sold, and the party Hall agrees to pay, upon demand and upon a showing of expenditure by the party Wright, one-half of any and all costs, including attorneys' fees, government fees, etc., in connection with such foreign protection, up to but not to exceed an expenditure of Fifteen Hundred and no/100 ($1,500.00) Dollars on the part of said Hall,

and it is understood and agreed by and between the parties hereto that should the party Wright make applications in foreign countries and demand payment of one-half the costs and fees in connection therewith from the party Hall, and should the party Hall fail or refuse to pay one-half such fees and costs within sixty days from the date of demand, then and in that event it is understood and agreed that any license hereby granted by the party Wright to the party Hall concerning such country or countries, shall cease and terminate."

III.

That among the inventions involved in the interferences referred to in said paragraph 7 are the inventions of the Wright United States Patent No. 2,374,317 issued upon the United States Patent application Serial No. 369,389 involved in one of said interferences as set forth in said agreement (page 1, Ex. "D"). [405]

IV.

That Canada is a country foreign to the United States in which oil well equipment is sold.

V.

That defendant Wright filed in Canada, on November 8, 1947, an application, identified as Serial No. 567,083, for Canadian patent for the inventions involved in said interferences and based upon the application for United States Patent No. 2,374,317.

VI.

That a Canadian Patent No. 463,822 was issued to

defendant on March 21, 1950, upon said Canadian application Serial No. 567,083.

VII.

That on October 25, 1950, defendant Wright filed application, Serial No. 607,200, seeking reissue of the Canadian Patent No. 463,822.

VIII.

That said Canadian Patent No. 463,822 was reissued on March 13, 1951, upon said application Serial No. 607,200 as Canadian Reissue Patent No. 472,-221.

IX.

That said Canadian Reissue Patent No. 472,221 is based upon and contains inventions of said United States Patent No. 2,374,317. [406]

X.

That no demand by either defendant Wright or defendant B & W, Inc., has been made upon plaintiff for one-half or any other portion of any or all costs including attorney's fees, government fees, etc., or any other costs or fees in connection with the filing, prosecution, obtainment or maintainment of any of the said Canadian patents or Canadian patent applications.

XI.

That no showing has been made to the plaintiff either by defendant Wright or B & W, Inc., as to any costs, fees, or any other expenditures incurred by defendant Wright or B & W, Inc., in connection

with the filing, prosecution, obtainment or maintenance of any of said Canadian patents or Canadian patent application.

XII.

That plaintiff Hall neither failed nor refused to pay one-half of any fees and costs demanded of Hall by either defendant Wright or defendant B & W, Inc., and incurred by defendants or either of them in connection with the filing, prosecution, obtainment or maintenance of the said Canadian patent applications or said Canadian patents.

XIII.

That plaintiff Hall is and has heretofore been ready, willing, and able to pay one-half of the costs, fees or other expenditures demanded of him and to otherwise fully perform under the provisions of paragraph 7 of the said agreement of September 15, 1944. [407]

XIV.

That defendants and each of them have notified the patent counsel of the Gulf Oil Corporation and its Canadian subsidiaries of the issuance of said Canadian Reissue Patent.

XV.

That said patent counsel issued a directive and opinion to said corporation and its subsidiaries in Canada that the use in Canada of the Hall-type scratchers manufactured by Weatherford Oil Tool Company was an infringement of said Canadian patent, and directing the said companies to use, in

Canada, only scratchers purchased from defendant B & W, Inc.

XVI.

That prior to said notification the said Gulf Oil Corporation and its Canadian subsidiaries used in Canada large numbers of Hall-type scratchers manufactured by Weatherford Oil Tool Company, said purchases in the years 1949, 1950, to August of 1951, equalling in sales price in excess of $50,000.

XVII.

That defendants have not brought suit for infringement of said Canadian patent or said Canadian Reissue patent in Canada against Gulf Oil Corporation or its Canadian subsidiaries on account of the use in Canada by said Gulf Oil Corporation or its subsidiaries of Hall-type scratchers purchased from Weatherford Oil Tool Company.

XVIII.

That as a condition precedent to their resumption of purchases of the Hall-type scratchers from Weatherford Oil Tool [408] Company for use in Canada, Gulf Oil Corporation have demanded that plaintiff and Weatherford Oil Tool Company obtain either an acknowledgement that the license granted to Hall under said agreement between plaintiff and defendants, dated September 15, 1944, extends to Canada under the Canadian Reissue patent, or in the alternative a judgment of this Court declaring that the license granted Hall under the said agreement extends in Canada under the said Canadian Reissue patent.

XIX.

That neither the Gulf Oil Corporation nor any of its subsidiaries in Canada, since the said notification by defendants to the patent counsel of the Gulf Oil Corporation and directive issued by said patent counsel, has bought or used in Canada any Hall-type scratchers.

XX.

That the Gulf Oil Corporation and its Canadian subsidiaries have since said notification and directive bought all scratchers used in Canada by said corporation and its subsidiaries from defendants B & W, Inc.

XXI.

That on January 25, 1952, this Court issued an injunction restraining plaintiff and defendants from making any communication involving any claims to any of the patent rights involved in this litigation without also including the notification of the existence and nature of this litigation.

XXII.

That defendants have not yet informed the Gulf Oil Corporation or any of its Canadian subsidiaries that the [409] Canadian Reissue patent No. 472,221 is one of the patents included within the terms of the said paragraph 7 of the agreement of September 15, 1944.

XXIII.

That defendants have not informed either the Gulf Oil Corporation or any of its Canadian sub-

sidiaries that the said Canadian Reissue Patent No. 472,221 is one of the patent rights involved in this litigation and that the issue as to whether B & W, Inc., has any patent rights in Canada which would be infringed by the Gulf Oil Corporation or any of its Canadian subsidiaries if they used in Canada the Hall-type scratchers manufactured by Weatherford Oil Tool Company awaits determination and the judgment of this Court.

XIV.

That defendants have not informed Gulf Oil Corporation or any of its Canadian subsidiaries that the issue as to whether the sale to them or use by them in Canada of the scratcher sold by B & W, Inc., under the trade name "Multiflex" and the trade name "Nucoil" would be a violation of the license granted to plaintiff by the defendants awaits the determination and judgment by this Court.

Proposed Conclusions of Law

I.

Inventions involved in the interferences settled by the agreement of September 15, 1944, between plaintiff and defendants are covered by Canadian Reissue Patent No. 472,221 issued in March 13, 1951, to defendant Wright as a Reissue of Canadian Patent No. 463,822 issued on March 21, 1950, to defendant Wright upon an application Serial No. 567,083, filed by defendant Wright [410] in the Canadian Patent Office on November 9, 1947, and based upon and con-

taining the inventions of United States Patent No. 2,374,317 and the United States patent application Serial No. 369,389 upon which application United States Patent No. 2,374,317 was issued.

II.

Plaintiff is licensed in Canada under said Canadian Reissue Patent No. 472,221.

III.

That the use in Canada of scratchers included within the license granted to plaintiff under the agreement of September 15, 1944, with the consent and permission of plaintiff, whether expressly or impliedly given by plaintiff, does not constitute an infringement of said Canadian Reissue Patent.

IV.

One of the issues in this lawsuit is whether the license granted to Hall by the said agreement of September 15, 1944, includes scratchers of any or all of the following types to wit:

(a) Hall-type scratchers manufactured by the Weatherford Oil Tool Company;

(b) Multiflex scratchers manufactured by defendant B & W, Inc.

(c) Nucoil scratchers manufactured by defendant B & W, Inc.

V.

It is one of the issues in this lawsuit whether the sale in Canada and use in Canada by purchasers of

Multiflex or [411] Nucoil scratchers manufactured or sold by defendant B & W, Inc., constitutes a breach of the agreement of September 15, 1944.

VI.

It is one of the issues in this lawsuit whether the use in Canada of Multiflex or Nucoil scratchers sold by defendant B & W, Inc., constitutes a violation of the license and patent rights granted to plaintiff by the agreement of September 15, 1944.

VII.

Defendants Kenneth A. Wright and B & W, Inc., and their officers, employees, agents, attorneys, and representatives, during the term of the agreement of September 15, 1944, between the plaintiff and defendants, should be enjoined from making any communication to any person or corporation, alleging that the license granted by said agreement of September 15, 1944, does not extend in Canada under the Canadian Reissue Patent No. 472,221, issued March 13, 1951, to Kenneth A. Wright.

/s/ PHILIP SUBKOW,

/s/ THOMAS E. SCOFIELD.

Receipt of Copy acknowledged.

[Endorsed]: Filed February 8, 1952. [412]

[Title of District Court and Cause.]

No. 7839-WM Civ.

ORDER ON MOTION FOR SUMMARY JUDGMENT

This cause having come before the court for hearing on plaintiff's motion for summary judgment, filed February 8, 1952; and the motion having been argued and submitted for decision; and it appearing to the court:

(a) that in order to determine whether the license agreement of September 15, 1944, extends to Canada and Canadian Reissue Patent No. 472,221, paragraph 7 of that agreement must be interpreted;

(b) that paragraph 7 is subject to the same infirmities as to clarity as the remainder, making necessary the interpretation of the whole agreement in the light of "the circumstances under which it was made" [see Cal. Code Civ. P. §§ 1860, 1864; Cal. Civ. Code §§ 1647, 1649, 1650, 1654; Woodbine [459] vs. Van Horn, 29 Cal. 2d 95, 104, 173 P. 2d 17, 22 (1946)] in order to determine the "intention of the parties" [see Cal. Code Civ. P. § 1859; Cal. Civ. Code § 1636]; and

(c) that the pleadings and affidavits on file show the existence of genuine issues as to the circumstances under which the license agreement of September 15, 1944, was made, and therefore summary judgment cannot be granted [Fed. R. Civ. P. 56(c)];

It Is Now Ordered that plaintiff's motion for summary judgment be and is hereby denied.

It Is Further Ordered that the Clerk this day serve copies of this order by United States mail on the attorneys for the parties appearing in this cause.

April 23, 1952.

/s/ WM. C. MATHES,
United States District Judge.

[Endorsed]: Filed April 24, 1952. [460]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE WHY TEMPORARY INJUNCTION SHOULD NOT BE ISSUED AGAINST DEFENDANTS

Upon reading of the affidavit of Thomas E. Scofield, it is Ordered that the defendants, Kenneth A. Wright and B & W, Inc., show cause before this Court in the courtroom usually occupied by the undersigned Judge in the Federal Building at Los Angeles, California, on Monday, the 21st day of July, 1952, at 10 o'clock a.m., why a temporary injunction should not issue restraining and commanding said defendants from manufacturing "Multiflex" and "Nu-Coil" scratchers or having same manufactured; and from selling or causing said scratchers to be sold to oil well drilling companies, oil producing companies or others pending the entry of judgment in this cause.

It Is Further Ordered that service of a copy of this order and and a copy of the Affidavit of Thomas E. Scofield upon [461] counsel for defendants on the 10th day of July, 1952, shall be sufficient notice of said hearing.

It is so ordered this 9th day of July, 1952.

/s/ WM. C. MATHES,
United States District Judge.

Presented by:

/s/ HOWARD ENSTON.

[Endorsed]: Filed July 9, 1952. [462]

[Title of District Court and Cause.]

AFFIDAVIT

State of Missouri,
County of Jackson—ss.

Thomas E. Scofield, being first duly sworn, deposes and says he is counsel of record for Hall in the above-styled case.

1. That in paragraph III of an agreement dated September 15, 1944, between Hall and defendants, Wright and B & W, Inc. (Plaintiff's Exhibit 34), it is provided

"III. The party Wright agrees to, and by these presents does grant an exclusive license to the said Hall under all claims that may issue on the above-

mentioned applications, or either of them, [463] of Hall and which claims are limited to the structure of Hall and are not such as to be applicable to the structure of the application and patent to the party Wright."

2. That one of the applications of Hall referred to in paragraph III of said agreement was application Serial No. 388,891; and at the time the agreement was made, claim 19 was the only allowed claim in said application.

3. The scope of the exclusive license granted to Hall by paragraph III of said agreement is delineated by the defendants in the following language in paragraph X of their answer to the first cause of action and paragraph VI of their answer to the second cause of action of plaintiff's First Amended Complaint, found on pages 15 and 18 of defendants' "Supplemental and Amended Answer of Defendants to Plaintiff's Supplemental Pleading and Plaintiff's First Amended Complaint and Counter-claim for Defendants," filed June 9, 1950, which is presently defendants' answer and counter-claim in this cause:

X.

"Answering Paragraph X, defendants admit that they have asserted, and continue to assert, that plaintiff has no right to manufacture and sell under the agreement of September 15, 1944, any form of scratcher other than that referred to in said agreement, i.e., scratchers shown and described in the application, Serial No. 388,891, and that the license

to plaintiff as set forth in said agreement is precisely limited to the structure of the application, Serial No. 388,891, * * * in that no claim can issue upon application, Serial No. 388,891, or any alleged continuation-in-part thereof * * *'' [464]

VI.

"Answering Paragraph VI of the Second Cause of Action, defendants deny each and all of the allegations of said Paragraph VI, and further answering said Paragraph VI, defendants allege that the agreement of September 15, 1944, and particularly Paragraph III of said agreement, provides that the purchasers of scratchers from plaintiff (which scratchers embody the structure of the drawing of the application, Serial No. 388,891, as defined by Claim 19 of said application), had and have a license implied by law to use the method described in the Hall application, Serial No. 528,183, but defendants further allege that said implied license is and was limited to the use of scratchers in performing said method constructed in accordance with the drawings of the application, Serial No. 388,891, and as covered by allowed Claim 19 thereof, and defendants further allege that the parties to said agreement of September 15, 1944, fully understood and agreed that the plaintiff and his customers were immune from infringement of the claims of the Wright patents as to all structures manufactured in accordance with the drawings and descriptions of said application, Serial No. 388,891, and as defined by any claim,

i.e., Claim 19, that might issue in a patent based upon said application, Serial No. 388,891.

"And further defendants allege that the parties to the agreement of September 15, 1944, specifically understood and agreed to the limitations of Paragraph III of the agreement of September 15, 1944, as fully herein set forth in this paragraph." [465]

4. Since the date of the agreement, Hall applications Serial 627,013 and Serial 55,619 have been filed, the former a continuation-in-part of Serial No. 388,891 and the latter a continuation of Serial 627,013, by which applications the invention of the earlier Hall application Serial 388,891 was perpetuated in the Patent Office. These applications are before this Court as Plaintiff's Exhibits 1, 3 and 69, respectively.

5. On January 27, 1950, attorney for defendants, acting on defendants' behalf, instructed affiant, who was prosecuting the Hall applications pursuant to paragraph VI of the agreement of September 15, 1944, (Plaintiff's Exhibit 34);

"It is, therefore, my request as attorney for B & W, Inc., and writing at their request, that as attorney prosecuting said Hall application 627,013 which includes the disclosure of 388,891, that you endeavor to secure claims which would properly cover the disclosure in 388,891 and which would be as broad as could be obtained."

These instructions are contained in the attached letter marked "Plaintiff's Exhibit 85."

6. Affiant made every effort to obtain such generic claims, and in a decision dated January 30, 1950, rendered by the Board of Appeals in the Patent Office and included as a part of Plaintiff's Exhibit 69, Hall was allowed in Serial 55,619 claims 23, 24 and 31, reading as follows:

"23. In combination with a well casing a support rotatably mounted on the exterior of said casing, stiff wire whiskers each flexibly attached at one end to said support and each projecting from a point on the periphery of the support at an angular inclination having sidewise direction with respect to the radius of the support, drawn to said projection point of the particular whisker, and [466] all in substantially the same angular relation with the support.

"24. In well cleaning equipment, a casing reciprocable in the bore of a well, a support rotatably mounted on the exterior of said casing, stiff wire whiskers each flexibly attached at one end to said support, and each projecting from a point on the periphery of the support at an angular inclination having sidewise direction with respect to the radius of the support drawn to said projection point of the particular whisker and all in substantially the same angular relation with the support, the free ends of said whiskers being of a length to frictionally contact the well wall and abrade its surface upon reciprocation of the casing, said whiskers upwardly inclined on the downstroke and downwardly inclined on the upstroke of the casing and upon reversal of

the casing travel adapted to fulcrum both at their points of contact with the well wall and substantially at their points of attachment with the support whereby vertical movement of the casing after each reversal rotates the support on the casing, thereby relieving bending stress on the whiskers and shifting the whiskers circumferentially upon the well bore to contact and abrade a different area upon each casing reciprocation.

"31. A well bore cleaning scratcher adapted to be rotatably mounted on a well casing comprising an annular support, stiff wire whiskers, each flexibly attached at one end to said support and each projecting from a point on the periphery of the support at an angular inclination having sidewise direction with respect to the radius drawn to said projection point of the particular whisker and all of said whiskers [467] projecting in substantially the same angular relation from said support."

7. Furthermore, the Patent Office has decided that Hall is entitled to the date of his earliest application Serial 388,891, as to the inventions covered by claims 23, 24 and 31 allowed in Serial 55,619; see Plaintiff's Exhibit 71—"Decision on Motions" in Interference 84,411, dated December 15, 1950.

"Each of the prior Hall applications Serial 388,-891 and 627,013 disclose well scratchers with whiskers having sidewise inclination. The motion to shift the burden of proof by Hall is accordingly granted."

To the same effect were statements of the Patent Office on pages 1 and 7 in the "Decision on Petition

for Reconsideration" rendered in Interference 84,411 on May 22, 1951:

Page 1. "As pointed out in the briefs and in the decision, the party Hall has prosecuted three applications. Serial No. 388,891 was filed on April 16, 1941, and became abandoned on November 8, 1945. Serial No. 627,013 was filed on November 6, 1945, (two days before the prior case became abandoned), and it in turn was abandoned on July 5, 1949. The application involved in this interference, Serial No. 55,619, was filed October 20, 1948. There is therefore continuity of prosecution between the applications, i.e., no hiatus occurred in the prosecution."

Page 7. "As stated above and in the previous decision (Plaintiff's Exhibit 71 above), the counts of this interference (claims 23, 24 and 31) are held to be clearly readable on and entitled to the benefit of the filing date of Serial 388,891." [Parentheses supplied.] [468]

8. An exclusive license was granted Hall under paragraph III of the aforesaid agreement, which license came into being upon execution of the agreement and, according to defendants' own pleadings, covered structure defined by a claim which had been allowed in a pending application but was not issued in a granted patent, i.e., claim 19, of Serial 388,891. Claims 23, 24 and 31 are likewise claims allowed in a pending application Serial 55,619 which the Patent Office designates as a proper continuing application perpetuating the invention of the patent application, Serial 388,891.

9. Defendants' Multiflex and Nu-Coil Scratchers (Plaintiff's Exhibits 57 and 72), have structure covered by claims 23, 24 and 31, exclusively, licensed to Hall by paragraph III of the agreement of September 15, 1944, since

(a) The support or collar is rotatably mounted on the exterior of a casing with

(b) stiff wire bristles flexibly attached thereto,

(c) each bristle projecting from a point on the periphery of the support at an angular inclination having sidewise direction with respect to the radius of the support drawn to said projection point of the particular whisker

(d) and all in the same angular relation with the support,

(e) the free ends of the whiskers being of a length to frictionally contact the well wall and abrade its surface upon reciprocation of the casing.

10. The attached chart titled "Patent Office Prosecution of Hall Applications" and marked "Plaintiff's Exhibit 86" shows graphically below the red horizontal line on page 1 the measures, chronologically arranged, which defendants have used [469] in the Patent Office to delay issuance of the Hall patent on application Serial 55,619 containing claims 23, 24 and 31 allowed to Hall on January 30, 1950.

11. During the period when Hall was endeavoring to fulfill defendants' admonitions to obtain the

broadest possible claims and while defendants were deliberately delaying issuance of Hall's patent on application Serial 55,619, as indicated in the chart hereto attached, defendants brought on the market and sold competitively its "Nu-Coil" scratchers. The "Nu-Coil" type scratchers were offered and sold and are still being offered and sold at a lower price, size for size, than the Hall-type scratchers, as indicated by the attached price lists, marked "Plaintiff's Exhibits 87 and 88," respectively, to the irreparable injury and damage of the plaintiff Hall.

Further deponent saith not.

/s/ THOMAS E. SCOFIELD.

Subscribed and sworn to before me this 2nd day of July, 1952.

[Seal] /s/ JENNIE JUNE RATHBUN,
Notary Public.

My commission expires May 15, 1953.

[Endorsed]: Filed July 9, 1952. [470]

[Title of District Court and Cause.]

ORDER

This cause having heretofore come before the court for hearing pursuant to the order to show cause issued July 9, 1952, directing the defendants to appear and show cause why temporary injunc-

tion should not issue against them, and the matter having been submitted for decision upon the papers and memorandums on file.

It Is Now Ordered that the plaintiff's application for temporary injunction be and is hereby denied and that the order to show cause issued July 9, 1952, be and is hereby discharged.

It Is Further Ordered that the Clerk this day serve copies of this order by United States mail on the attorney for the parties appearing in this cause. September 18, 1952.

/s/ WM. C. MATHES,
United States District Judge.

[Endorsed]: Filed September 18, 1952. [478]

United States District Court, Southern District of California, Central Division
Civil No. 7839-WM

JESSE E. HALL,

Plaintiff,

and

WEATHERFORD OIL TOOL COMPANY, INC., a Texas Corporation; WEATHERFORD SPRING COMPANY OF VENEZUELA, C.A., a Venezuelan Corporation; HALL DEVELOPMENT COMPANY, C.A., a Venezuelan Corporation; WEATHERFORD, LTD., a Corporation of the Province of Alberta, Canada; WEATHERFORD INTERNACIONAL, S.A. de C.V., a Corporation of Mexico; NEVADA LEASEHOLD CORPORATION, a Nevada Corporation; PARKER INDUSTRIAL PRODUCTS, INC., a Texas Corporation,

Plaintiff-Interveners,

vs.

KENNETH A. WRIGHT, ROLAND E. SMITH, B & W, INC., a California Corporation; ADAMS-CAMPBELL CO., LTD., a California Corporation; and CALIFORNIA SPRING CO., INC., a California Corporation,

Defendants.

SECOND AMENDED COMPLAINT

Reformation; Declaratory Relief; Breach of Contract; Anti-Trust; Unfair Competition.

Plaintiff and plaintiff-interveners complain and allege as follows: [543]

General Allegations Applicable to
All Causes of Action

I.

Plaintiff, Jesse E. Hall, is a citizen of the United States, and a resident of the State of Texas, hereinafter also referred to as "Hall."

Plaintiff-Interveners

Weatherford Oil Tool Company, Inc., is a Texas corporation, of Houston, Texas, hereinafter also referred to as "WOTCO";

Weatherford Spring Company of Venezuela, C.A., is a Venezuelan corporation, of Maracaibo, Venezuela, hereinafter also referred to as the "Venezuelan Company";

Hall Development Company, C.A., a Venezuelan corporation, of Maracaibo, Venezuela, hereinafter also referred to as "Hall Development";

Weatherford, Ltd., is a corporation of the Province of Alberta, Canada, of Edmonton, Alberta, Canada, hereinafter also referred to as the "Canadian Company";

Weatherford Internacional, S.A. de C.V., a corporation of Mexico, of Tampico, Mexico, hereinafter also referred to as the "Mexican Company";

Nevada Leasehold Corporation, a Nevada corporation, of Las Vegas, Nevada, hereinafter also referred to as "Leasehold";

Parker Industrial Products, Inc., a Texas corporation, of Parker County, Texas, hereinafter also referred to as "Parker."

Defendants

Kenneth A. Wright is a citizen of the United States, residing in Long Beach, California, hereinafter also referred to as "Wright";

Roland E. Smith is a citizen of the United States, residing in Los Angeles, California, hereinafter also referred [544] to as "Smith";

B & W, Inc., is a California corporation of Long Beach, California, hereinafter referred to as "B & W";

Adams-Campbell Co., Ltd., is a California corporation, of Los Angeles, California, hereinafter also referred to as "Adams-Campbell";

California Spring Co., Inc., is a California corporation of Los Angeles, California, hereinafter also referred to as "California Spring Co."

II.

Each of the matters in controversy between plaintiff and each of defendants and also between each plaintiff-interveners and each of the defendants exceeds, exclusive of interest and costs, the sum of $3,000. This action arises under Sections 1332; 2201 and 2202 of Title 28, U.S. Code and the Sherman Act, U.S. Code, Title 15, Sections 1 to 3, inclusive, Section 15 and Section 26.

III.

Hall did, on September 15, 1944, enter into an agreement with B & W and Wright, a true copy of which is hereto attached as Exhibit A.

First Cause of Action

Reformation

IV.

Plaintiff and plaintiff-interveners allege that:

(1) The words "and for all foreign countries" were mistakenly included in paragraph 2 of the agreement Exhibit A; and

(2) There were mistakenly omitted from paragraph 3 of Exhibit A the express provisions:

(a) that Hall was granted an exclusive right, excluding also the defendants Wright and B & W, to manufacture and sell the scratchers characterized by bristles extending [545] non-radially or in a sidewise direction from the collar support; and

(b) that said exclusive license included a non-exclusive license to Hall under the Wright U.S. Patents No. 2,338,372 and No. 2,374,317 and any other patents of the U.S. and foreign countries owned or controlled by Wright or B & W and necessary for the full and quiet enjoyment of the exclusive license granted to Hall.

(3) There was mistakenly omitted from Paragraph 4 of Exhibit A, the express provision that the royalty was due only on the sale of scratchers covered by the exclusive license.

(4) There was mistakenly omitted from paragraph 7, Exhibit A, the express provision that Hall was non-exclusively licensed in all countries foreign to the U.S. under patent applications filed for inventions involved in the interferences referred to in said paragraph 7.

(5) There was mistakenly omited from agreement Exhibit A the express provision that the rights granted Hall under the agreement Exhibit A are assignable and divisible by sub-license.

(6) There was mistakenly omitted from agreement Exhibit A the express provision that the exclusive and non-exclusive licenses therein granted became effective on September 15, 1944.

V.

Said inclusion and said omissions specified in paragraph IV were each the result of inadvertence and mistake on the part of Hall, Wright and B & W then having knowledge of said mistake and inadvertence, or were each the result of mutual mistake of Hall, Wright and B & W, whereby the agreement as executed did not express the true agreement and intentions of the parties; and Hall did not prior to August of 1946 [546] discover said errors and omissions.

Second Cause of Action

Interpretation of Agreement

VI.

Plaintiff and plaintiff-interveners contend, and

defendants deny that Hall under the agreement Exhibit A:

(1) Had, under paragraph 3 of the agreement Exhibit A, the exclusive right, excluding also Wright and B & W, in the U.S. and foreign countries, to manufacture and sell scratchers characterized by bristles extending non-radially and in a sidewise direction from the collar support; and

(2) Was exclusively licensed to manufacture and sell scratchers he was manufacturing and selling on and prior to September 15, 1944, and also the Multiflex and Nucoil scratchers sold by B & W; and

(3) Had a non-exclusive license under the Wright U.S. Patents No. 2,338,372 and No. 2,374,317 and any other patent of the U.S. or foreign countries owned or controlled by Wright or B & W and necessary for the full and quiet enjoyment of the exclusive license granted Hall; and

(4) Was obligated to pay royalty under paragraph 4 based on the sales price collected by Hall or his assignees or sub-licensees; and

(5) Had a license as referred to in paragraph 7, of the agreement Exhibit A under any application for patent, in countries foreign to the U.S., for the inventions involved in the interferences referred to in said paragraph, which license arose upon the filing of any such application by or for Wright or B & W, and remained in effect until terminated as provided in said paragraph 7; and

(6) Was granted the licenses and had the rights and obligations which, except as provided in paragraph 7 of the [547] agreement Exhibit A, became effective on September 15, 1944; and

(7) Had the right under paragraph 9 of the agreement Exhibit A to bring suits in the U.S. and foreign countries for infringement of patents involved in said agreement.

Declaration of Rights

VII.

Plaintiff and plaintiff-interveners contend, and defendants deny:

(1) That by agreement with Hall and Leasehold, WOTCO, under the agreement Exhibit A, has had in the U.S. at all times since December 15, 1948, the exclusive rights set forth in paragraphs VI(1) and VI(2) above, and the non-exclusive license as set forth in paragraph VI(3) above.

(2) That by agreement with Hall, the Canadian Company, under the agreement Exhibit A, has had in Canada, at all times since July 1, 1951, the exclusive rights as set forth in paragraphs VI(1) and VI(2) above, and the non-exclusive license as set forth in paragraph VI(3) above, said rights and licenses terminating on December 31, 1952.

(3) That by agreements with Hall, Hall Development and the Venezuelan Company, under the agreement Exhibit A, have had the exclusive rights as set forth in paragraphs VI(1) and VI(2) above,

in countries other than the United States for the period beginning July 14, 1947, and ending July 1, 1951, and the same exclusive rights in all countries other than Canada and the United States for the period beginning July 1, 1951, and terminating on December 31, 1952; that by the same agreements with Hall, Hall Development and the Venezuelan Company have had the non-exclusive license set forth in paragraph VI(3) above in the same countries and for the same periods as described by the exclusive rights in this paragraph.

(4) That by agreement with Hall, Leasehold, under the agreement Exhibit A, had in the U.S., from May 28, 1949, to [548] June 15, 1949, the exclusive rights as set forth in paragraphs VI(1) and VI(2) above, and the non-exclusive rights as set forth in paragraph VI(3) above, and under said agreement between Hall and Leasehold, Leasehold transferred said rights and licenses to WOTCO on June 15, 1949.

(5) That by agreement with Hall, the Mexican Company, under the agreement Exhibit A, has, effective January 1, 1953, in all countries other than the U.S. and Canada, the exclusive rights as set forth in paragraphs VI(1) and VI(2) above, and the non-exclusive rights as set forth in paragraph VI(3) above.

(6) That by agreement with Hall, Parker, under the agreement Exhibit A, from December 15, 1948, to June 30, 1949, had the right to grant to WOTCO, in the United States, the rights as set forth in para-

graphs VI(1) and VI(2) above, said rights being non-exclusive, and the non-exclusive rights as set forth in paragraph VI(3) above, and under said agreement with Hall, Parker did on December 15, 1948, grant such non-exclusive licenses to WOTCO and has granted no licenses to any one else under said agreement, all licenses to WOTCO terminating on June 30, 1949.

Third Cause of Action

Breach of the Agreement

VIII.

Plaintiff and plaintiff-interveners complain that defendants did breach, repudiate, and abandon the agreement Exhibit A in the following respects:

(1) Wright and B & W in August, 1946, and divers times thereafter and during the term of the rights and licenses set forth in paragraphs VI and VII notified customers of Hall, WOTCO, the Canadian Company, Hall Development, and the Venezuelan Company that said customers infringed the patent rights of B & W by the use of scratchers, referred to in pargarphs [549] VI(1) and VI(2), purchased from said-named plaintiff and plaintiff-interveners.

(2) That B & W on or about May 14, 1946, and on September 30, 1947, charged Hall, and on April 3, 1951, and in October, 1952, charged WOTCO with infringement of the patent rights of B & W because

of the manufacture and sale of scratchers referred to in paragraphs VI(1) and VI(2).

(3) That defendants manufactured in the U.S. and sold in the U.S., Canada, Venezuela, and in other countries since the Fall of 1948, the Multiflex scratchers, and since about November, 1949, the Nucoil scratchers.

(4) That B & W and Wright did in April, 1950, assert in the Patent Office, a claim to the scratcher referred to in paragraphs VI(1) and VI(2) and have by numerous proceedings in the Patent Office, at various times thereafter and now pending, asserted said prior claim and contested Hall's right to the issue of letters patent containing claims licensed in said agreement Exhibit A; that Wright and B & W knew that such assertion of said claim and said proceedings were without merit and that B & W and Wright are by their conduct and, under said agreement Exhibit A, estopped from so contesting said claims or issuance of said patents to Hall, but have asserted said claims and so contested the issuance of said patents in an attempt to deny to Hall the benefits of said agreement Exhibit A and to reserve to themselves the privilege of manufacturing and selling the scratchers exclusively licensed to Hall.

(5) That defendants Wright and B & W threaten to continue to breach said agreement in the respects set forth in paragraphs VIII(1) to

VIII(4), inclusive, above, and that plaintiff and plaintiff-interveners have no complete or adequate remedy at law. [550]

Fourth Cause of Action

Violation of the Sherman Anti-Trust Act

IX.

Plaintiff and plaintiff-interveners adopt paragraphs VIII(1) to VIII(5), inclusive, as though fully set forth in this paragraph.

X.

That the manufacture or sale of scratchers of the form manufactured and sold by plaintiffs and plaintiff-interveners and of the form of Nucoil and Multiflex are not covered by the claims of the patents No. 2,338,372 and No. 2,374,317 and that none of the defendants either employ the method covered by the patent No. 2,338,372 or manufacture or sell the combination covered by claims 1, 2, 5, to 9, inc., and 15 of the patent No. 2,374,317, and defendants Wright and B & W have charged plaintiff and plaintiff-interveners and their customers with infringement of said patents by use of scratchers purchased from plaintiff or plaintiff-interveners for the purpose of coercing said customers not to purchase such scratchers and instead to purchase scratchers from B & W and from Smith, and that defendants have thereby restrained the sale of scratchers in interstate and foreign commerce in a

material respect and thereby have asserted an unlawful monopoly in the manufacture and sale of said scratchers in interstate and foreign commerce.

XI.

That the defendants have agreed and conspired among themselves that B & W shall sell directly or through Smith and its other agents and distributors said scratchers in interstate commerce and in foreign commerce and to perform each of the acts complained of in paragraphs IX and X, and that California Spring and Adams-Campbell shall manufacture such [551] scratchers to the exclusion of B & W and Smith; Adams-Campbell and California Spring agreeing that they will not themselves sell scratchers in interstate and foreign commerce.

XII.

That defendants by each of said acts, conspiracy and agreements as set forth in paragraphs IX, X, and XI did and do monopolize and restrain commerce and trade among the several states and with foreign nations in violation of the anti-trust laws, U.S. Code, Title 15, Sections 1 to 3, inclusive, and Sections 15 and 26.

XIII.

That defendants each threaten to perform and continue to perform the unlawful acts complained of in paragraphs IX to XII, inclusive, and that plaintiff and plaintiff-interveners are each thereby damaged in their several businesses and properties

for which plaintiff and plaintiff-interveners have no adequate or complete remedy at law.

Fifth Cause of Action

Unfair Competition

XIV.

Plaintiff and plaintiff-interveners adopt paragraphs VIII(1) to VIII(5), inclusive, and IX to XIII, inclusive, as though fully set forth in this paragraph.

XV.

That the said charges of infringement were intended to and did interfere with and materially damage the businesses of plaintiff and plaintiff-interveners and were not made preliminary to the bringing of any infringement action against either plaintiff or of plaintiff-interveners or any of their customers. [552]

XVI.

That plaintiff and plaintiff-interveners have been forced to indemnify their several customers against any liability arising from any infringement actions brought by B & W for the use by the customers of scratchers purchased from plaintiff and plaintiff-interveners, and defendant B & W did represent to the customers of plaintiff and plaintiff-interveners that Hall was not financially responsible and could not perform under said agreements of indemnification.

XVII.

That plaintiff, up to December 15. 1948, and

plaintiff-interveners have, in the countries and at times during which plaintiff-interveners were licensed, spent large sums of money in the building of their several businesses and goodwill for the manufacture and sale of scratchers, and the wrongful acts of defendants as set forth in paragraphs VIII(1) to VIII(5), inclusive, and IX to XVI, inclusive, were done in order to injure and appropriate the businesses and goodwill of plaintiff and plaintiff-interveners, and the defendants did, as set forth in paragraphs XI to XIII, inclusive, agree among themselves and conspire to so appropriate and damage the said businesses and goodwill of the plaintiff and plaintiff-interveners and threaten to continue to so injure and appropriate the goodwill and businesses of the plaintiff and plaintiff-interveners, for which plaintiff and plaintiff-interveners have no adequate remedy at law.

XVIII.

That defendants Smith, California Spring, and Adams-Campbell, all with knowledge of the rights and licenses of Hall under the agreement Exhibit A, have induced and threaten to continue to induce B & W to breach the said agreement in the respects set forth in paragraph IX; and that California Spring [553] and Adams-Campbell manufactured for and sold to B & W for resale by B & W, and Smith has sold for B & W scratchers referred to in paragraphs VI(1) and VI(2).

Sixth Cause of Action

Accounting

XIX.

That plaintiff and plaintiff-interveners have been damaged and the defendants have been unjustly enriched in amounts of which the plaintiff and plaintiff-interveners have not sufficient present knowledge, and it will require an accounting to determine said damage and said unjust enrichment.

Wherefore, plaintiff and plaintiff-interveners pray judgment:

1. Reforming the agreement Exhibit A to state the true intentions and agreement of the parties and to declare the rights of the parties as set forth in paragraphs VI(1) to VI(7), inclusive, and in paragraphs VII(1) to VII(5), inclusive; and

2. Interpreting and declaring the rights of the plaintiff and plaintiff-interveners under the writing Exhibit A as set forth in Paragraphs VI(1) to VI(7), inclusive, and in VII(1) to VII(5), inclusive; and

3. Cancelling said agreement Exhibit A and ordering defendants

(a) to restore to Hall the inventions and applications and all patents assigned by Hall or agreed to be assigned by Hall under said agreement and all moneys heretofore paid by Hall under said agreement and all other considerations and benefits ob-

tained or enjoyed by defendants and each of them under said agreement, and [554]

(b) to account and to pay to Hall compensatory money damages for all considerations and benefits obtained by defendants from Hall under said agreement which defendants are unable to restore to Hall; and

4. Ordering defendants Wright and B & W to pay as damages for the breach of the agreement Exhibit A the sums as follows:

1. To Hall, the sum of $250,000.
2. To WOTCO, the sum of $250,000.
3. To Hall Development and the Venezuela Company, $250,000.
4. To the Canadian Company $100,000.

5. Ordering defendants Wright, B & W, California Spring, Adams-Campbell, and Smith to pay to plaintiff and plaintiff-interveners three-fold the damages suffered by the latter by reason of defendants' violation of the anti-trust laws; and

6. Ordering defendants to account for and pay to plaintiff and plaintiff-interveners all profits, gains, and other unjust enrichment obtained by defendants and each of them as a result of the wrongful acts complained of in this complaint; and

7. During the continuance of this action and permanently thereafter enjoining defendants and each of them and their several attorneys, agents, representatives, employees, and officials (a) from manu-

facturing and selling scratchers referred to in paragraphs VI(1) and VI(2) of this complaint; and (b) from charging plaintiff or plaintiff-interveners or their customers with infringement or from bringing or continuing any action for infringement of any patents licensed to Hall, his assignees or sub-licensees under said agreement; and (c) from in any other way interfering with the business [555] of plaintiff and plaintiff-interveners in the manufacture and sale, or with the use by their customers of scratchers licensed under said agreement Exhibit A; and

8. Ordering defendants to pay to plaintiff and plaintiff-interveners reasonable attorneys' fees; and

9. Ordering defendants to pay all costs of suit incurred and to be incurred by plaintiff and plaintiff-interveners; and

10. Decreeing all other and further relief to plaintiff and plaintiff-interveners as seem meet, proper, and just in the premises.

/s/ PHILIP SUBKOW,

/s/ THOMAS E. SCOFIELD,

Attorneys for Plaintiff, Jesse E. Hall; and for Plaintiff-Interveners, Weatherford Oil Tool Company, Inc.; Weatherford Spring Company of Venezuela, C.A.; Hall Development Company, C.A.; Weatherford, Ltd.; Weatherford

Internacional, S.A. de C.V.; Nevada Leasehold Corporation; Parker Industrial Products, Inc.

[Endorsed]: Filed January 2, 1953. [556]

[Title of District Court and Cause.]

ANSWER OF DEFENDANTS ROLAND E. SMITH, ADAMS-CAMPBELL CO., LTD., AND CALIFORNIA SPRING CO., INC.

Come now defendants above named and answering the Second Amended Complaint herein allege: [563]

I.

These defendants are without knowledge of the facts alleged in the complaint, Paragraph I thereof, saving and excepting as herein specifically admitted, and basing their answer upon such lack of knowledge, deny the allegation and require strict proof thereof, except these defendants admit that Roland E. Smith is a citizen of the United States and resides in Los Angeles, California. That B & W, Inc., is a California corporation having a place of business at Long Beach, California. That Adams-Campbell Co., Ltd., is a California corporation having a place of business at Los Angeles, California. That California Spring Company is a California corporation having a place of business at Los Angeles, California, and that Kenneth A. Wright is a citizen of

the United States residing in Los Angeles, California.

II.

These defendants deny specifically each and every of the allegations of Paragraphs II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII and XIX and each and every of the subdivisions thereof, and further these defendants allege that they do not have any information sufficient to form a belief with respect to the truth of such allegations, and basing their answer upon that ground, deny each and every of the allegations thereof, saving and excepting as hereinafter specifically admitted.

III.

These defendants each answering for itself, and for a further and separate defense, deny that they have at any time acted in concert or have committed any act or acts in conspiracy or have conspired in any way as alleged in the complaint herein, and further these defendants allege: [564]

(a) That defendant, Roland E. Smith, is a person totally unknown to and who has had no contact whatsoever, either directly or indirectly with defendants California Spring Company and/or defendant Adams-Campbell Co., Ltd.

(b) That the only dealings which Adams-Campbell Co., Ltd., has had with the defendant, California Spring Company which could be in any way connected with any of the operations complained of in the complaint herein, is that said Adams-Campbell

Co., Ltd., has purchased said spring elements from the California Spring Company and the facts, conditions and considerations flowing from Adams-Campbell Co., Ltd., to California Spring Company, or California Spring Company to Adams-Campbell Co., Ltd., with respect to the purchase of said springs are totally unknown to defendants, Kenneth A. Wright, B & W, Inc., or Roland E. Smith.

(c) That Adams-Campbell Co., Ltd., has an agreement to manufacture certain scratchers for B & W, Inc., on a stated price basis and upon certain terms and conditions with respect to delivery and payment, and other than the said agreement, has no other agreement with any of the defendants named in the complaint herein.

(d) That the defendant, Adams-Campbell Co., Ltd., has no agreement and has no understanding with any of the other defendants by which the said Adams-Campbell Co., Ltd., agrees not to manufacture, sell or use scratchers in any way.

(e) That defendant, California Spring Company, has no agreement with any of the other defendants herein by which it has agreed to refrain from the manufacture, sale or use of scratchers of any kind.

(f) That the defendant, Roland E. Smith, has no agreement with the defendants herein named which would in any way prevent him from entering into the manufacture, sale or use of [565] any scratchers in this country or any country foreign to the United States.

(g) That none of these defendants have any agreement or have committed any acts, or have in any way conspired to monopolize or restrain commerce and trade among the several States of the United States and with foreign nations in violation of the Anti-trust laws of the United States, U. S. Code, Title 15, §§ 1 to 3, inclusive, §§ 15 and 26.

(h) That these defendants have no agreement and have not conspired among themselves that B & W, Inc., shall sell scratchers directly through Smith and its other agents or distributors in interstate and foreign commerce, or that California Spring Company and Adams-Campbell Co., Ltd., shall manufacture said scratchers to the exclusion of B & W, Inc., and Smith, and that there is no agreement by which Smith and Adams-Campbell Co., Ltd., agree that they will not manufacture scratchers in interstate and foreign commerce.

IV.

That defendants California Spring Company and Adams-Campbell Co., Ltd., at the times herein complained of, are totally without knowledge with respect to the agreement, Exhibit A, and that said defendants only learned of the agreement, Exhibit A, upon being advised thereof by counsel for the plaintiff and plaintiff-interveners herein, and that these defendants have not acted in any way to induce nor do they threaten to continue to induce B & W, Inc., to breach any agreement or to breach the agreement, Exhibit A, in any way, nor have they in any way conspired or induced B & W, Inc., to have

Californa Spring Company and Adams-Campbell Co., Ltd., manufacture and sell to B & W, Inc., for resale by B & W, Inc., and Smith as alleged in Paragraph XVIII of the complaint herein. [566]

Now, Therefore, These Defendants Pray This Court,

(1) That it dismiss the complaint herein against each of these defendants.

(2) That these defendants recover their attorneys' fees herein incurred.

(3) That plaintiff and plaintiff-interveners be forthwith enjoined and be hereafter perpetually enjoined from making any assertions or bringing any actions against these defendants based upon the acts herein complained of.

(4) That these defendants recover all costs of suits incurred and for such other and further relief to these defendants as may seem meet, proper and just in the premise.

LYON & LYON,

By /s/ LEWIS E. LYON,
Attorneys for Defendants.

Service of Copy acknowledged.

[Endorsed]: Filed March 20, 1953. [567]

[Title of District Court and Cause.]

ANSWER AND COUNTERCLAIMS OF DEFENDANTS, KENNETH A. WRIGHT AND B & W, INC., TO THE SECOND AMENDED COMPLAINT

Come now defendants, Kenneth A. Wright and B & W, Inc., and answering the Second Amended Complaint, and for their counterclaim, state and allege: [569]

I.

Answering Paragraph I, these defendants admit each and all of the allegations thereof, saving and excepting that the true names, residences of the parties where in error are:

Kenneth A. Wright is a resident of the City of Los Angeles.

The correct name is California Spring Company.

II.

These defendants deny the allegations of Paragraph II.

III.

These defendants deny the allegations of Paragraph III, and in this regard, assert that it is apparent that no contract was entered into on September 15, 1944, as there was never a meeting of the minds of Jesse E. Hall and Kenneth A. Wright and B & W, Inc.

First Cause of Action

Reformation

IV.

These defendants deny the allegations of Paragraph IV and each and all of the sub-divisions thereof.

V.

These defendants deny each and all of the allegations of Paragraph V.

Second Cause of Action

Interpretation of Agreement

VI.

Answering Paragraph VI, these defendants contend, admit and allege:

(1) That plaintiff and plaintiff-interveners are estopped from making the contention set forth in paragraph (1) of Paragraph VI because of the representations made in the [570] contract, Exhibit A, and because of the representations set forth in the second "Whereas" clause set forth on page 1 of the agreement of September 15, 1944, and further in that at no time did the defendants, B & W, Inc., or Kenneth A. Wright, acting on behalf of B & W, Inc., come to any agreement with plaintiff, Hall, with respect to the manufacture or sale of scratchers as characterized in said paragraph (1) of Paragraph VI.

With respect to paragraph (2) of Paragraph VI,

these defendants allege that plaintiff Hall, and he alone, was licensed under the agreement of September 15, 1944, to manufacture and sell in the United States the form of scratcher as shown and described in his applications for Letters Patent, Serial Nos. 388,891 and 528,183, and no other form of scratcher.

Answering paragraph (3) of Paragraph VI, these defendants allege that it was specifically understood by Jesse E. Hall and Kenneth A. Wright on September 15, 1944, that Kenneth A. Wright was acting on behalf of B & W, Inc., and that B & W, Inc., would grant to Hall no license under its method patents, and therefore, these defendants deny the allegations of paragraph (3) of Paragraph VI.

Answering paragraph (4) of Paragraph VI, these defendants allege that plaintiff Hall was obligated to pay royalty based upon the established list price at which the devices were offered for sale and that the obligation to pay royalties was not based upon the sales price collected by Hall as alleged in said paragraph (4) of Paragraph VI, and these defendants further allege that plaintiff Hall had no right under said agreement of September 15, 1944, to transfer any right in any way to any other person, firm or corporation under said agreement, but that said agreement is in its very nature and essence a personal agreement between Jesse E. Hall and B & W, Inc., upon whose behalf Kenneth A. Wright entered into the agreement of September 15, [571] 1944.

Answering paragraph (5) of Paragraph VI, these

defendants deny specifically the allegations of this sub-paragraph.

These defendants deny the allegations of paragraph (6) of Paragraph VI.

These defendants deny the allegations of paragraph (7) of Paragraph VI.

Declaration of Rights

VII.

These defendants deny that WOTCO has now or has had at any time, any rights under the agreement, Exhibit A, either to any exclusive or non-exclusive license.

These defendants also deny each and all of the allegations of sub-paragraph (2) of Paragraph VII.

These defendants deny each and all of the allegations of sub-paragraph (3) of Paragraph VII.

These defendants deny each and all of the allegations of sub-paragraph (4) of Paragraph VII.

These defendants deny each and all of the allegations of sub-paragraph (5) of Paragraph VII.

These defendants deny each and all of the allegations of sub-paragraph (6) of Paragraph VII.

Third Cause of Action

Breach of the Agreement

VIII.

These defendants each, separately and jointly, deny each and every of the allegations of Paragraph

VIII of the Second Amended Complaint, unless and except as hereinafter specifically admitted and these defendants further allege:

(1) The plaintiff, Jesse E. Hall, Sr., did breach, repudiate and abandon the agreement, Exhibit A, in the following respects: [572]

(a) Plaintiff, Jesse E. Hall, Sr., in November, 1945, did abandon the applications, Serial Nos. 388,-891 and 528,183, and particularly the application, Serial No. 388,891, without advice to these defendants, or either of them, in violation of the specific provisions of Paragraph 6 of the agreement, Exhibit A, and plaintiff, Jesse E. Hall, Sr., prior to November, 1945, failed to comply with the provisions of said agreement and particularly Paragraph 6 of said agreement, and did not supply the party Wright, or defendant, B & W, Inc., or either of them, with copies of the proceedings had in connection with the Hall applications as specifically required by Paragraph 6 of Exhibit A, and plaintiff Hall has abandoned and surrendered and breached the agreement, Exhibit A, and has forever surrendered any license, as no claims may issue on the above-mentioned applications as required by Paragraph 3 of Exhibit A, and further, in the said failure to comply with Paragraph 6 of Exhibit A and the abandonment of the application, Serial No. 388,891, without notice to these defendants, or either of them, plaintiff and those acting in his behalf, has violated the explicit trust which they accepted under Para-

graph 6 of Exhibit A, to the great and irreparable damage to these defendants.

(b) That plaintiff, Jesse E. Hall, on or about November 5, 1945, did wilfully, and for the purpose of defrauding the Commissioner of Patents and these defendants, and each of them, file in the United States Patent Office an alleged continuation-in-part application, Serial No. 627,013, contrary to the provision of the patent laws with respect to the filing of applications for United States Letters Patent.

(c) That plaintiff, Jesse E. Hall, did refuse and fail to pay the royalties due under the agreement, Exhibit A, from and after June 30, 1946, and has failed and refused to comply [573] with the requirements of Paragraph 4 of the said agreement, Exhibit A, thereby breaching said agreement and abandoning and surrendering the same.

(d) That plaintiff, Jesse E. Hall, has further breached and abandoned the agreement, Exhibit A, in failing and refusing to comply with the provisions of Paragraph 5 of the agreement, Exhibit A, from and after June 30, 1946.

(e) That plaintiff, Jesse E. Hall, did, on or about August 22, 1946, notify these defendants that plaintiff would not perform under said agreement until and unless these defendants, and each of them, agreed to and did execute a modified and supplemental agreement by which the rights and obligations of the parties to such agreement, Exhibit A, would be changed and altered in material respects.

(f) That plaintiff, Jesse E. Hall, did further breach, surrender and abandon the agreement, Exhibit A, and did convert to his own use and advantage the rights accruing to these defendants thereunder as defined in Paragraph 2 thereof by filing applications in countries foreign to the United States for Letters Patent and asserting ownership of said foreign applications and Letters Patent, and further by selling, assigning and transferring said applications and in instituting suit for alleged infringement of said foreign Letters Patent against these defendants and their distributors and agents, and in so doing, the plaintiff wilfuly, intentionally, and wrongfully, and for the purpose of defrauding these defendants, and each of them, did file said applications for Letters Patent contrary to the provisions of the laws of said foreign countries, and did obtain and assert said illegally issued and wrongfully-obtained Letters Patent against these defendants, to their great and irreparable damage. [574]

(g) That plaintiff, Jesse E. Hall, further breached and abandoned said agreement, Exhibit A, by abandoning the application, Serial No. 627,013, without notice to these defendants, and further in failing and refusing to carry out the trust imposed upon him by Paragraph 6 of Exhibit A, and did further breach and abandon the agreement by filing an application, Serial No. 55,619, as an asserted continuation-in-part of the abandoned application, Serial No. 388,891.

(h) That plaintiff, Jesse E. Hall, did further

breach, abandon and surrender the agreement, Exhibit A, and rights thereunder in asserting to the trade and to defendants' customers and those under contract to defendants, that if they made, used or sold defendant's (B & W, Inc.) Multiflex and Nu-Coil scratchers that they would be required to pay to plaintiff a royalty of $2.50 per scratcher so made, used or sold.

(2) That as a further defense to the allegations of Paragraph VIII, these defendants further allege:

(a) That plaintiff, in demanding that these defendants sign a modified and altered agreement, did acknowledge and admit that plaintiff had no said rights or license as is now alleged in Paragraph VI, sub-paragraphs (1), (2) and (3) of the complaint herein.

Fourth Cause of Action

Violation of the Sherman Antitrust Act

IX.

Answering the complaint herein, and Paragraphs IX and X thereof, these defendants deny each and every allegation thereof not specifically herein admitted.

X.

These defendants deny each, every and all of the allegations of Paragraphs XI, XII and XIII. [575]

XI.

(a) As a separate and further defense to this cause of action, these defendants allege and assert

that there is no agreement between them and any of the defendants named herein which violates any provision of U. S. Code 15, Sec. 1 to 3, inclusive, or Sections 15 and 26, or any section of the law, and

(b) Further these defendants allege that plaintiff's and plaintiff-interveners' assertion to the trade and to defendant, B & W, Inc.'s, customers or prospective customers, of the exclusive right to manufacture, sell or use, or grant the right or license to others to sell scratchers like defendants' Nu-Coil or Multiflex scratchers constitutes acts, a conspiring and agreement, in restraint of commerce and trade in violation of the provisions of the Antitrust laws, U. S. Code, Title 15, Sections 1 and 3, and Sections 15 and 26.

XII.

That plaintiff and plaintiff-interveners threaten to perform and continue to perform and perpetuate the acts complained of in Paragraph XI (b) hereof and that defendants and each of them are thereby damaged in their several businesses and properties for which defendants and each of them have no adequate remedy at law.

Fifth Cause of Action

Unfair Competition

XIII.

These defendants and each of them separately and jointly deny each and every allegation of Paragraphs XIV, XV, XVI and XVII except and unless specifically herein admitted.

XIV.

Answering Paragraph XVIII of the complaint herein, these defendants first deny each and all of the allegations of [576] said paragraph, and further these defendants allege:

(a) That plaintiff and plaintiff-interveners named Smith, California Spring, and Adams-Campbell as defendants here for the sole purpose of interfering with the lawful pursuit of the defendant's business, and for the sole purpose of embarrassing defendants in their lawful pursuit of their business, for the purpose of injuring defendants' business, and to damage the same and for no other reason, knowing all the time that:

(1) Defendant, California Spring Co., Inc., was a complete stranger to these defendants, Wright and/or B & W, Inc.

(2) That defendant, California Spring Co., Inc., had no agreement or understanding of any kind or character with these defendants, Wright and/or B & W, Inc.

(3) That defendant, California Spring Co., Inc., had no knowledge of any agreement between plaintiff, Jesse E. Hall, and defendants.

(4) That defendant, Adams-Campbell Co., Ltd., had no knowledge of the agreement, Exhibit A, until notified thereof by plaintiff's notice of January, 1952, wherein plaintiff demanded $2.50 per scratcher royalty from defendant, Adams-Campbell Co., Ltd.

(5) That defendant, California Spring Co., Inc., manufactured no device for defendants, Wright and/or B & W, Inc.

(6) That defendant, Smith, was only one of several salesmen for these defendants and had no other dealings with any other defendants.

(7) That each and all of the foregoing facts were known to plaintiff and plaintiff-interveners or could easily have been ascertained. [577]

Sixth Cause of Action

Accounting

XV.

Defendants deny each and every allegation of Paragraph XIX of the complaint herein.

XVI.

These defendants allege that the plaintiff and plaintiff-interveners did not come before this court with clean hands and could not herein prevail.

Counterclaim for Declaratory Judgment and Relief

As a counterclaim to plaintiff's Second Amended Complaint, these defendants and counter-claimants allege:

A.

That counter-claimant, B & W, Inc., is a California corporation having its principal place of business at Long Beach, Los Angeles County, California.

B.

That Jesse E. Hall is a resident of the State of Texas, residing in the City of Weatherford, State

of Texas; that plaintiff-intervener, Weatherford Oil Tool Company, is a corporation of the State of Texas, having its principal place of business at Weatherford, Texas; that Weatherford Spring Company of Venezuela, C.A., is a Venezuelan corporation having its place of business in the City of Caracas, Venezuela; that Hall Development Company, C.A., is a Venezuelan corporation having a place of business in the City of Caracas, Venezuela; that Weatherford, Ltd., is a Canadian corporation of Edmonton, Alberta, Canada; that Weatherford Internacional, S.A. de C.V. is a Mexican corporation of Tampico, Mexico; that Nevada Leasehold Corporation is a Nevada corporation of Las Vegas, Nevada; that Parker [578] Industrial Products, Inc., is a Texas corporation of Parker County, Texas.

C.

Each of the matters in controversy between counter-claimant, B & W, Inc., and each of the plaintiff, plaintiff-interveners-counter-defendants, exceeds, exclusive of interest and costs, the sum of $3,000.00. This counterclaim arises under Sections 2201, 2202 of Title 28, U. S. Code, the patent laws of the United States and the Sherman Act, U. S. Code 15, Sections 1 to 3, inclusive, and Sections 15 and 26.

D.

That counter-claimant, B & W, Inc., through its Vice President, Kenneth A. Wright, negotiated an agreement with counter-defendant, Jesse E. Hall,

Sr., on September 15, 1944. That an agreement, Exhibit A hereto, was executed September 15, 1944, on behalf of and with the approval of B & W, Inc. That in fact no agreement was arrived at on September 15, 1944, between counter-defendant, Jesse E. Hall, Kenneth A. Wright, or B & W, Inc., because there was at that time and place and at the time of execution of the agreement no meeting of the minds of the contracting parties.

E.

That the agreement in the terms and conditions of the agreement of September 15, 1944, Exhibit A, as understood by counter-claimant and its Vice President, Kenneth A. Wright, was by said counter-claimant and Kenneth A. Wright fully performed until the said agreement was breached, abrogated and surrendered by counter-defendant, Jesse E. Hall.

F.

That these counter-claimants contend that the agreement of September 15, 1944, if in fact such agreement was ever consummated, was abrogated, surrendered and abandoned in each and [579] every respect by counter-defendant, Jesse E. Hall's actions as follows:

(1) Failure and refusal of counter-defendant to abide by the terms of Paragraphs 5 and 6 of the said agreement and to carry out the trust imposed upon him in the prosecution of the application, Serial No. 388,891, resulting in the voluntary aban-

donment of said application without notice to these counter-claimants, or either of them.

(2) Failure and refusal to pay royalties as provided for under the agreement and the declaration by the said counterdefendant and those operating in his behalf that he would not carry out the terms and conditions of the said agreement of September 15, 1944, unless and until the agreement was modified and altered.

(3) The subsequent abandonment of the application, Serial No. 627,013, when it was shown and proven that said application was fraudulently filed because of the manufacture, sale and publication of the form of scratcher disclosed therein more than four years prior to the filing of the said application.

(4) The fraudulent filing of the application, Serial No. 55,619, as a continuation-in-part of the application, Serial No. 388,891.

(5) The assertion that these counterclaimants were bound under the provisions of the agreement of September 15, 1944, as to any claim or claims that might be obtained by the counterdefendant, Hall, in the application, Serial No. 55,619.

(6) The filing of fraudulent applications for Letters Patent in countries foreign to the United States contrary to the laws of such countries and the assertions of the patents granted upon these applications in countries foreign to the United [580] States against this counterclaimant, its agents, distributors, customers and prospective customers.

(7) The filing of fraudulent affidavits in the United States Patent Office in an effort to induce the Patent Office to make the said application, Serial No. 55,619 special, based upon an alleged discovery of and asserted infringement of allowable claims of said application, and that said infringement was just discovered as required by the rules of the United States Patent Office, contrary to the facts and knowledge of the said affiants, counterdefendant, and those acting in his behalf.

G.

The institution of suits against counterclaimants and counterclaimants' customers and agents in countries foreign to the United States for asserted use of the inventions covered by the agreement of September 15, 1944, based upon alleged infringement of the patent which, by the terms of said agreement were assigned to these counterclaimants. The giving of notice to the trade and to the customers of these counterclaimants and to the manufacturing agents for these counterclaimants demanding a royalty of $2.50 per scratcher based upon asserted rights growing out of the agreement of September 15, 1944, and to the assertion that claims were allowable to counterdefendant in the application, Serial No. 55,619, when counterdefendant knew, or had cause to know, that said claims were obtained by fraudulent representations made to the Patent Office on his behalf.

H.

That disputes have arisen between counterdefendant and counterclaimants and counterdefendant-in-

terveners that with respect to matters hereinabove specifically pleaded in this counterclaim, and that these counterclaimants respectfully request this court under its equitable powers and under Section 2201, [581] Title 28, U. S. Code, to declare the rights of the parties in the premises, and including but not limited to the revocation of the powers of the attorney selected by counterdefendant and the appointment in his stead of an attorney selected by this court to carry out the further prosecution of the applications, if any, before the United States Patent Office, should this court find that a contract was entered into on September 15, 1944, and has not been cancelled, abrogated, or rescinded by plaintiff or those acting on his behalf.

Counterclaim for Infringement of Letters Patent Nos. 2,338,372, 2,374,317 and 2,392,352

For a further and second counterclaim against counterdefendant and counterdefendant-interveners for infringement of Letters Patent of the United States, these counterclaimants allege:

I.

That the jurisdiction of this court is predicated upon the fact that this is a suit for infringement of Letters Patent of the United States and under the Patent Statutes of the United States, some of the acts of infringement hereinafter complained of having been committed within the Southern District of California, where the counterdefendant, Jesse E. Hall, had a regular and established place of business,

and where counterdefendants-interveners have an established place of business or have submitted to the jurisdiction of this court by intervening herein against these counterclaimants.

J.

That on the 4th day of January, 1944, Patent No. 2,338,372 was duly and legally issued to K. A. Wright for Method for Conditioning Well Bores, and on April 24, 1945, Patent No. 2,374,317 was duly and legally issued to K. A. Wright for Well Production Equipment, and on January 8, 1946, Patent No. 2,392,352 [582] was duly and legally issued to K. A. Wright for Method of Placing Cement Plugs in Well Bores.

K.

That subsequent to the issuance of said patents, said K. A. Wright, by instruments in writing, transferred all of his right, title and interest in and to said Letters Patent, and in and to the inventions covered thereby, together with all right to recover from past infringement, to counterclaimant, B & W, Inc., a California corporation, and that B & W, Inc., now, and at all times subsequent to said assignments, has been the owner of the entire right, title and interest in and to said Letters Patent and in and to the inventions covered thereby.

L.

That counterdefendant, Jesse E. Hall, and those claiming under him, including counterdefendant-interveners, have infringed and have jointly conspired

with each other to infringe, and have jointly and severally infringed the said Letters Patent and each of them, by manufacturing well scratchers and by selling the same to customers and in inducing said customers to use the said well scratchers without the license or consent of counterclaimants in performing the methods claimed in said Letters Patent, knowing that said scratchers so manufactured and sold were primarily manufactured and sold for use in carrying out the said methods and had no other reasonable or intended use, and in using the said scratchers as covered by one or more of the claims of Letters Patent No. 2,374,317 and has assisted, aided, abetted and conspired with said customers in the performance of the methods of said Letters Patent and in the use of said Letters Patent as covered by one or more of the claims of Letters Patent No. 2,374,317; and that in further infringement thereof, said counterdefendant and counterdefendant-interveners have instructed [583] said customers as to the use of said well scratchers in the performance of said methods of said Letters Patent and in the uses of said scratchers in infringement of said Letters Patent and will continue to do so unless enjoined by this court.

M.

That said counterclaimants have placed the required statutory notice on all scratchers manufactured and sold by it under said Letters Patent and in addition thereto, have given written notice to Jesse E. Hall and counterdefendant-interveners of their infringement of said Letters Patent.

Counterclaim for Violation of
The Sherman Antitrust Act

N.

Counterclaimant, B & W, Inc., adopts Paragraphs A and B of its counterclaim for declaratory judgment and relief as though fully set forth in this counterclaim.

O.

That this counterclaim arises under the Sherman Act of U. S. Code, § 15, §§ 1 to 3, inclusive, and §§ 15 and 16.

P.

That counterdefendant and counterdefendant-interveners do not hold any Letters Patent of the United States with respect to the manufacture, use or sale of scratchers.

Q.

That counterdefendant and counterdefendant-interveners have conspired together and have sought to monopolize the trade in the manufacture, sale and use of scratchers of the form of the counterclaimants' Nu-Coil and Multiflex scratchers and have, in carrying out their said conspiracy and effort to monopolize the trade in the manufacture, sale and use of the said [584] scratchers, not only in the United States, but in countries foreign to the United States, notified all the trade, including the customers and prospective customers of counterclaimants and those acting in the capacity of selling agents and manufacturers for counterclaimants that should

they manufacture, sell, or use scratchers of the type of Nu-Coil or Multiflex scratchers, that they would be required to pay unto counterdefendant and counterdefendant-interveners the sum of $2.50 per scratcher for each scratcher manufactured, used or sold, and have carried out the said plan and conspiracy in an effort to monopolize the trade and contrary to the provisions of the Sherman Antitrust law and contrary to §§ 1 to 3, inclusive, and §§ 15 and 16 of U. S. Code, § 15.

R.

That counterdefendant and counterdefendant-interveners have conspired among themselves and with each other to monopolize the trade in the sale of said scratchers, not only throughout the United States, but in countries foreign to the United States, and in carrying out the said conspiracy, have instituted fallacious actions for alleged infringement against counterclaimants and counterclaimants' agents and distributors in countries foreign to the United States upon purely fallacious grounds and upon the basis of Letters Patent which are clearly invalid and known to be invalid to said counterdefendant and counterdefendant-interveners in that said Letters Patent were granted upon applications filed in said countries contrary to the provisions of the laws of said countries and were granted by said countries without examination, a fact well known to the said conspiring counterdefendant and counterdefendant-interveners. [585]

S.

That said counterdefendant and counterdefendant-interveners have agreed to divide between them-

selves the business in the sale of the said scratchers, not only in the United States but in countries foreign to the United States, and have conspired and do conspire to monopolize and restrain commerce among the several states in violation of the Anti-trust laws, §§ 1 to 3, inclusive, and §§ 15 and 16 of U. S. Code.

T.

That these counterdefendant and counterdefendant-interveners each threaten to perform and continue to perform the unlawful acts herein complained of, and that these counterclaimants and each of them are hereby damaged in their several businesses and properties for which they have no adequate or complete remedy at law.

Counterclaim for Unfair Competition

U.

Counterclaimant, B & W, Inc., adopts paragraphs A, B and C of the Counterclaim for Declaratory Judgment and Relief as though fully set forth in this paragraph.

V.

That the charges of infringement and the notices sent by counterdefendant and counterdefendant-interveners made to these counterclaimants were intended to and did interfere with and materially damaged the business of these counterclaimants herein and were not made preliminary to the bringing of any action for infringement against either of the counterclaimants or any of their customers.

That counterclaimants have been forced to indemnify their several customers against liability arising out of the claims stated in the notices given them by counterdefendant [586] and counterdefendant-interveners and that even in spite of the said indemnifications given, or offered to be given to such customers or prospective customers, that the business of some of the customers has been, since the giving of such notices, lost to these counterclaimants.

W.

That counterclaimants have, in the United States and in countries foreign to the United States, and at all times hereinafter referred to, spent large sums of money in the building of its business and goodwill in the manufacture and sale of scratchers and the wrongful acts of counterdefendant as herein complained of were done in order to injure the business and goodwill of counterclaimants, and the counterdefendant and counterdefendant-interveners have agreed among themselves to, and have conspired to, so appropriate and damage the business and goodwill of counterclaimants and threaten to continue to so injure and appropriate the business and goodwill of counterclaimants for which counterclaimants have no adequate remedy at law.

Accounting

X.

That counterclaimants have been damaged and plaintiff and plaintiff-interveners have been unjustly enriched in amounts of which defendant and

counterclaimant have not sufficient present knowledge and it will require an accounting to determine said damage and said unjust enrichment.

Wherefore, Defendants-Counterclaimants Pray Judgment:

(1) That the court declare that no agreement was in fact consummated between plaintiff and defendant due to the failure of the meeting of the minds of the said parties.

(2) Deny each and every prayer of relief sought by plaintiff and plaintiff-interveners to dismiss plaintiff's [587] complaint herein and each and every of the causes of actions as therein set forth and to restore to these defendants any and all things conveyed by them to plaintiff or plaintiff-interveners under the provisions of said agreement, Exhibit A.

(3) Interpret and declare the rights of defendant-counterclaimants and plaintiff and plaintiff-interveners under Exhibit A.

(4) To account to and pay to defendants, K. A. Wright and B & W, Inc., compensatory damages for all considerations and benefits obtained by the said plaintiff and plaintiff-interveners under the agreement, Exhibit A, which said plaintiff and plaintiff-interveners are unable to restore to these defendants.

(5) Ordering plaintiff and plaintiff-interveners to pay unto B & W, Inc., as damages for the breach of the agreement, Exhibit A, the sum of Two Hundred Fifty Thousand Dollars ($250,000.00).

(6) Ordering the plaintiff and plaintiff-interveners to pay unto defendant, B & W, Inc., and the other defendants three-fold the damages suffered by each of the defendants by reason of plaintiff's violation of the anti-trust laws.

(7) Ordering plaintiff and plaintiff-interveners to pay to, these defendants, and account for, all profits, gains and other unjust enrichments obtained by them and each of them as a result of the wrongful acts complained of in the counterclaim herein stated.

(8) During the continuance of this action and permanently thereafter enjoining plaintiff and plaintiff-interveners and their several attorneys, agents, representatives, employees and officials and those acting in concert with them, from manufacturing and selling scratchers in violation of and in infringement [588] of the Letters Patent herein set forth, and to pay unto defendant-counterclaimant, B & W, Inc., the damages to which said defendant, B & W, Inc., is entitled because of the said infringement and to declare that the Letters Patent herein set forth are each good and valid in law and that the plaintiff and plaintiff-interveners have infringed the several claims of said Letters Patent by the manufacture and sale of scratchers and the inducing of others to utilize the said scratchers manufactured solely for the purpose of use in the methods of the said Letters Patent in carrying out the said methods.

(9) That during the continuance of this action and permanently thereafter enjoining plaintiff and plaintiff-interveners and each of them and their sev-

eral attorneys, agents, representatives, employees and officials and those acting in concert with them from interfering in any way with the business of these defendants, or either of them, or charging that these defendants, or either of them, or their customers, have infringed upon any rights or asserted rights of plaintiff and plaintiff-interveners, and from bringing, threatening to bring, or causing to bring any action in the United States, or in any country foreign thereto, or in the continuing of any action now pending for infringement or asserted infringement of any of the Letters Patent related to scratchers or any method of utilizing the said scratchers in oil or other wells.

(10) Ordering plaintiff and plaintiff-interveners to pay these defendants a reasonable attorneys' fees under each of the causes of action (a) for violation of the antitrust laws; (b) under the counterclaim for infringement of the Letters Patent therein set forth, and (c) for the malicious and arbitrary institution of the action by plaintiff and plaintiff-interveners of this action against these [589] defendants.

(11) Adjudging and decreeing that the contract of September 15, 1944, was cancelled, abrogated and terminated in all respects by the prior breach of the terms of said contract by plaintiff, Jesse E. Hall.

(12) To account to defendant, B & W, Inc., for all damages caused the defendant, B & W, Inc., by plaintiff's actions and the actions of those acting

with plaintiff, Jesse E. Hall, in notifying the trade and customers of defendant, or prospective customers of the defendant, both in the United States and in countries foreign to the United States, with respect to allegations of infringement or the rights of the plaintiff or those acting with plaintiff to recover royalties or other payments or with respect to other asserted rights to Letters Patent with respect to scratchers manufactured by or sold by defendant, B & W, Inc.

(13) During the continuation of this action, and permanently thereafter, enjoining plaintiff, or those assertedly acting on plaintiff's behalf, or their servants, attorneys, agents, representatives and officials, and those acting in concert with them, from transferring any alleged rights held by any of said parties pursuant to, under, or as a result of the agreement of September 15, 1944, to any party, person, firm or corporation not a party to this action.

(14) Ordering plaintiff and plaintiff-interveners to pay all costs of suits incurred or to be incurred by these defendants.

(15) Decreeing all other and further relief to defendant counterclaimants as may seem meet, proper and just in the premises.

LYON & LYON,

By /s/ LEWIS E. LYON,

Attorneys for Defendants and Counterclaimants, B & W, Inc., and Kenneth A. Wright.

[Endorsed]: Filed March 20, 1953. [590]

[Title of District Court and Cause.]

REPLY TO COUNTER-CLAIM OF DEFENDANTS WRIGHT AND B & W

Answering Counter-claimants counter-claims, Counter-defendants admit, deny and allege as follows:

Answering the Counter-Claim for Declaratory Judgment and Relief

I.

Admit the allegations of paragraph A.

II.

Admit the allegations of paragraph B.

III.

Admit the allegations of paragraph C.

IV.

Admit the allegations of first and second sentences of [616] paragraph D, and deny all other allegations of said paragraph D.

V.

Deny all the allegations of paragraph E.

VI.

Answering paragraph F:

(a) Sub-paragraph (1), admit the abandonment of application Serial No. 388,891;

(b) Sub-paragraph (2), admit that no royalty has been paid to Counter-claimants since June 30, 1946;

(c) Sub-paragraph (3), admit the filing and abandonment of application Serial No. 627,013; but deny that the said filing was fraudulent;

(d) Sub-paragraph (4), admit the filing of continuing application Serial No. 55,619, but deny that the same was fraudulent;

(e) Sub-paragraph (5), adopt as their answers the allegations of paragraphs VI and sub-paragraphs 1 to 7, both inclusive, of their Second Amended Complaint as if fully set forth herein; and admit that the rights and licenses set forth in said paragraphs VI and VII include any claims which may be obtained in application Serial No. 55,619;

(f) Sub-paragraph (6), admit the filing of applications in foreign countries; deny that the same was fraudulent or contrary to the laws of such countries; admit the assertion of patents granted on said applications against Counter-claimants and those acting for Counter-claimants;

(g) Sub-paragraph (7), admit the filing of affidavits to make special in Serial No. 55,619; deny the same to have been fraudulent;

(h) Sub-paragraph (8), formerly paragraph G, admit the institution of suits against Counter-claimants and their customers [617] and agents by Jesse E. Hall in Venezuela; and admit the giving of notice to the trade as set forth in the injunctive order dated January 25, 1952; and admit asserting

that claims were allowable in application Serial No. 55,619; deny that the said claims were obtained by any fraudulent representations; and

(i) Except as is specifically admitted, deny each and every allegation of paragraph F and sub-paragraphs 1 to 8, both inclusive.

VII.

Answering paragraph H, admit that certain disputes have arisen between the parties; and deny that defendants are entitled to the relief prayed for in said paragraph H; and deny all other allegations of said paragraph.

Further Answering Said Counter-Claim for Declaratory Relief and as an Affirmative Defense, Counter-Defendants Allege as Follows:

(1) That Counter-claimants at no time since June 30, 1946, made any demand upon Counter-defendants for royalties or for an accounting with respect to scratchers sold by Counter-defendants under the license of September 15, 1944, (Exhibit A); and that Counter-claimants have at all times since September 15, 1944, had knowlege of the form of scratchers sold by Counter-defendants and were notified that royalties were being withheld pending settlement of controversies with respect to the provisions of the agreement of September 15, 1944; that because of such knowledge, notice, and acquiescence Counter-claimants are estopped from herein complaining of any failure to pay royalties under said [618] agreement and from claiming that

such failure to pay is any breach of said agreement Exhibit A.

(2) That since September 15, 1944, and up to June 30, 1946, Counter-claimants did accept royalties under said agreement well knowing that Counter-defendants had abandoned said application Serial 388,891 and Serial 528,183, and particularly that subsequent to May 17, 1946, Counter-claimants did accept royalty under said agreement, knowing at that time that said application Serial 388,891 and Serial 528,183 had been abandoned by said Counter-defendants, and that therefore Counter-claimants are estopped from claiming that said abandonment constitutes a material breach of said agreement.

(3) That Counter-claimants and each of them have since August 19, 1946, had full knowledge of the filing of said application Serial 627,013 and of the actions taken by Counter-defendants in said application and during the prosecution thereof, and have at no time since August 19, 1946, complained to Counter-defendants because of the filing of said application or of any action taken in the prosecution thereof, but instead have acquiesced therein, and thereby Counter-claimants are estopped from contending that the same is a breach of said agreement.

(4) That under the agreement of September 15, 1944, Exhibit A of the complaint, Counter-claimants had the duty and obligation to use due care and

diligence to protect in foreign countries the inventions licensed to Counter-defendants, including the inventions involved in interferences referred to in said Exhibit A, and also the inventions of Counter-defendant Hall assigned under paragraph II of said agreement; that Counter-claimants refused to file any such patent applications in any foreign country, although Counter-defendants did demand that Counter-claimants file such applications and offered to pay $1,500, as provided in paragraph 7 of said Exhibit A; that thereafter [619] Counter-defendants, relying on said refusal and failure by Counter-claimants to file and their intention to abandon all foreign patent rights and claims thereto for the said inventions, and in order to protect Counter-defendant Hall's exclusive rights thereto in foreign countries did file patent applications therefor; that Counter-claimants did not, until October and November, 1947, file in Canada and Great Britain, and have not filed any elsewhere; that said filing was without notice to Counter-defendants and no demand was made for contribution as provided in said paragraph 7; that Counter-claimants are thereby estopped from claiming any ownership or rights in any foreign application filed by Counter-defendants or in any patent issued therefor.

(5) That the alleged cause of action for declaratory relief is barred by the statute of limitations under both California Code of Civil Procedure Section 337(1) and under Section 343.

(6) Each of the alleged breaches of the agreement set forth in paragraph F and sub-paragraphs

(1) to (8), both inclusive, of the said counter-claim is barred by the statute of limitations C.C.P. 337(1).

(7) That the Counter-claimants are estopped to contend that the same are breaches of the agreement because of the laches of Counter-claimants.

(8) That the Counter-claimants are estopped to contend that the acts of Counter-defendant Hall and his attorney in the filing and prosecution of applications Serial No. 388,891, Serial No. 522,183, Serial No. 627,013, and Serial No. 55,619, are breaches of said agreement by their own conduct and by their approval and ratification thereof and acceptance of royalty from Counter-defendant Hall. [620]

(9) That the Counter-claimants are estopped from contending that any of the acts alleged in paragraph and sub-paragraphs (1) to (8), both inclusive, are breaches of the agreement because the same are res adjudicata.

(10) That Counter-claimants did, themselves, first reach the said agreement as set forth in paragraph VIII, sub-paragraphs (1) to (4), of the Second Amended Complaint, which is herein incorporated by reference as if fully set forth, and that Counter-defendants were and are excused from any performance under the said agreement.

Answering the Counter-Claim for Infringement

VIII.

Admit that the Weatherford Oil Tool Co., Inc.,

has an established place of business within the Southern District of California; that Jesse E. Hall did at one time have an established place of business in the said District, but does not now have one; and deny all allegations of paragraph I not specifically admitted.

IX.

Answering paragraph J, admit the issuance of U. S. Letters Patent Nos. 2,338,372; 2,374,317; and 2,392,352 to K. A. Wright; deny all of the allegations of said paragraph not specifically admitted.

X.

Answering paragraph K, have no knowledge of the contractual relationship of the parties B & W and Wright, or of the nature of the present ownership of said patents; admit the assignment in writing of said patents to B & W; and deny all allegations of said paragraph K not expressly admitted. [621]

XI.

Deny all allegations of paragraph L.

XII.

Answering paragraph M, admit the sending of notice to Counter-defendant and Counter-defendant-interveners; have insufficient knowledge as to all of the other allegations of paragraph M, and therefore deny the same.

Affirmative Defenses to Counter-Claim

For Infringement:

A.

Counter-defendants are informed and believe and upon such information and belief aver that, in view of the knowledge and practice of the art, at and prior to the date of filing of the applications for Letters Patent Nos. 2,338,372; 2,374,317; and 2,392,352, respectively, it required no invention whatsoever, but only ordinary skill of the art to which the said alleged invention of each of said enumerated Letters Patent of the United States appertains, to make the same, and said Letters Patent and each of them are consequently invalid and void.

B.

Counter-defendants are informed and believe and therefore aver that said Letters Patent Nos. 2,338,-372; 2,374,317; and 2,392,352 were and each is invalid and void because of the alleged invention and discovery and claimed in each of said patents, in all and material and substantial parts thereof, had been, prior to the alleged invention and discovery of each of said patents, respectively, published, patented or described and contained in Letters Patent and other printed publications, the [622] dates, publishers, numbers, and grantees of which Counter-defendants are now unable to supply but pray to be allowed to add herein by amendment to this answer or otherwise.

C.

Counter-defendants are informed and believe and therefore aver that said Letters Patent Nos. 2,338,-372; 2,374,317; and 2,392,352 were and each of them is void and of no effect in law in that the alleged invention described in each of said patents, respectively, was in public use in the United States before the alleged invention by the said Wright and for more than one year prior, respectively, to the date of the applications for patent for the said invention of Patents Nos. 2,374,317 and 2,392,352, and more than two years prior to the date of application for patent upon which Patent No. 2,338,372 was issued; and Counter-defendants further allege that said alleged inventions and each of them were known to or used by others in the United States before the alleged invention thereof by said K. A. Wright, the names of such users and those having such knowledge and the places and date of such public uses being at present unknown to Counter-defendants, but which, when ascertained, they beg leave to insert in this answer by amendment thereto.

D.

Counter-defendants are informed and believe and therefore aver that while the applications for said Letters Patent Nos. 2,338,372; 2,374,317; and 2,392,-352 were each of them pending in the United States Patent Office, the applicant of each of said applications so limited and confined the claims of each of said applications under the requirements of the Commissioner of Patents that the Counter-claimants

herein cannot now seek for or obtain construction for such claims sufficiently broad to cover [623] any wall scratchers or cleaners made, used, or sold by these Counter-defendants or any method or process or construction in which said apparatus is employed by any customers of Counter-defendants.

E.

Counter-defendants are informed and believe and upon such information and belief aver that said Letters Patent Nos. 2,338,372; 2,374,317; and 2,392,-352 are invalid because the specification and claims thereof do not describe the inventions thereof in such full, clear, and concise and exact terms as would enable a person skilled in the art to practice the same, and do not particularly and distinctly claim that which is alleged to be an improvement in said patents, respectively.

F.

Counter-defendants aver that Letters Patent Nos. 2,374,317 and 2,392,352 are each invalid and void because they are the same invention patented in Patent No. 2,338,372 issued to the Counter-claimant Wright.

G.

Counter-defendants adopt all of paragraphs IV and V of the first cause of action, and all of paragraphs VI and VII of the second cause of action as set forth in the complaint as this their paragraph G.

H.

Counter-defendants adopt paragraphs IX through XIII, inclusive, of the fourth cause of action in the complaint as paragraph H hereof as fully as if set forth herein. [624]

I.

Counter-defendants aver that any act complained of in Counter-claimants' claim for infringement which comes under any of the Patents Nos. 2,338,-372; 2,374,317; and 2,392,352 was licensed by Counter-claimants and was with their permission and consent.

J.

Counter-defendants aver that wall scrapers, wall scratchers and cleaners identical to those complained of by Counter-claimants were freely manufactured, used, and sold throughout the United States by Counter-defendants and others and were employed by customers of Counter-defendants and such others freely in the manner complained of prior to the bringing of this suit or any suit on said patents and each of them; and Counter-claimants, well knowing of such manufacture, use, and sale by said Counter-defendants and others and the use of such scrapers, wall scratchers, and cleaners by customers of Counter-defendants and others, did not object thereto and also acquiesced therein, causing the Counter-defendants and their customers to incur great expense in relying upon said failure to object and upon such acquiescence, therefore Counter-claimants are estopped in equity from enforcing

any rights in equity against these Counter-defendants or their customers.

Answering Defendants, Counter-Claim for Violation of Sherman Anti-Trust Act:

XIII.

Admit the allegations of paragraph N. [625]

XIV.

Admit the allegations of paragraph O.

XV.

Deny the allegation of pragraph P, and adopt as if fully set forth herein the allegations of paragraph VI and sub-paragraphs (1) to (7), both inclusive, of the Second Amended Complaint.

XVI.

Answering paragraph Q, Counter-defendant Hall admits the sending of notices as set forth in the injunctive order dated January 25, 1952; and deny all other allegations of said paragraph Q not expressly admitted.

XVII.

Answering paragraph R, admit the bringing of an action for infringement in Venezuela against the Defendant B & W and its customers and agents thereof; and deny all other allegations of said paragraph R not expressly admitted.

XVIII.

Deny all allegations of paragraphs S and T.

As Additional and Affirmative Defenses to the Counter-claim for Violation of the Sherman Act, Counter-Defendants Allege as Follows:

A. All causes of action pleaded by Counter-claimants in said counter-claim and accruing prior to March 20, 1951, are barred by the statute of limitations (California Code of Civil Procedure, Sec. 338(1)). [626]

B. The cause of action stated in the counter-claim is barred by laches in that the claim asserted is a stale claim, and Counter-claimants are thereby estopped from the bringing of this counter-claim.

Reply to Counter-Claim for Unfair Competition

XIX.

Admit the allegations of paragraph U.

XX.

Answering paragraph V, Counter-defendants allege that charges of infringement and notices made by Counter-defendants were proper and within their legal rights; have no knowledge of any indemnification issued by Counter-claimants or as to whether they have lost customers; and except as expressly admitted, deny all allegations of paragraph V.

XXI.

Answering paragraph W, Counter-defendants have no knowledge as to the sum of money or if any money has been spent by Counter-claimants in the

building of their business or good will; and deny all allegations of said paragraph W.

As Additional and Affirmative Defenses to the Counter-Claim for Unfair Competition, Counter-Defendants Allege:

A. That all causes of action pleaded in said counter-claim accruing prior to March 20, 1951, are barred by the statute of limitations (California Code of Civil Procedure 339(1)).

B. That the cause of action stated in the counter-claim is barred by laches in that the claim asserted is a stale claim and Counter-claimants are thereby estopped from bringing this [627] counter-claim.

Counter-Claim for Accounting

XXII.

Deny all allegations of paragraph X.

Wherefore, Counter-Defendants Pray:

(1) That Counter-claimants take nothing by their counter-claims, and that this Court dismiss all of said counter-claims.

(2) That the Court declare the rights of the parties as prayed for in paragraph 2 of the prayer to the Second Amended Complaint; and, further, declare that the party Hall is the owner of the entire right, title, and interest in and to all foreign patents for inventions involved in the interference referred to in Exhibit A.

(3) That the Court award Counter-defendants reasonable attorneys fees incurred by them pursuant to the patent statutes.

(4) Award Counter-defendants costs of suit incurred or to be incurred by Counter-defendants in the said action filed by Counter-claimants.

(5) For such other and further relief to Counter-defendants under the said answer to the counterclaims as may seem meet and proper in the circumstances.

/s/ THOMAS E. SCOFIELD,

/s/ PHILIP SUBKOW,

Attorneys for Plaintiff and Plaintiff-Interveners and Counter-Defendants.

Receipt of copy acknowledged.

[Endorsed]: Filed July 14, 1953. [628]

[Title of District Court and Cause.]

STIPULATION AND ORDER

This cause having come before the Court on hearing of defendants' Motion for the Production of Documents and Things for Inspection, Copying or Photographing under Rule 34 of the Federal Rules of Civil Procedure and plaintiffs' Motion for Inspection of Records, and for further pretrial hearing, said matters all having been considered by the Court, it is Stipulated That the proceedings heretofore had in this cause, including all submission

of evidence heretofore submitted to the Court and all testimony taken and proceedings had, are to be considered as having been had and taken under, and said evidence having been offered under, the amended pleadings, including plaintiffs' Second Amended Complaint and defendants' Answer and Counterclaims and plaintiffs' Reply to the Counterclaim of defendants, Wright and B and W, Inc., and It is Hereby Ordered that the aforestated [630] Stipulation be approved and that the plaintiffs' Motion for Inspection of Records be and the same is hereby denied without prejudice; That defendants' Motion for the Production and inspection of records be granted as to paragraph 9 thereof, and that plaintiffs shall deliver to defendants' attorney at 811 West Seventh Street, Los Angeles, California, any and all said agreements, leases, transfers or assignments or documents as are specified and outlined in said paragraph 9 for inspection and copying not later than 2:00 p.m. Friday, October 30, 1953.

It Is Further Ordered that plaintiff have available in Court at the further trial of this cause commencing on November 3, 1953, all those correspondence and records and things referred to in items 1 to 8, inclusive, of said Motion for Production of Documents and Things, it being understood that plaintiff has represented that certain of said documents are now identified in the record as exhibits and certain of said documents do not exist as specified in said motion, and where said documents are already identified in the record or said

documents or things do not exist, this order does not apply.

Defendants are to have available at the trial the contracts or agreements between defendants, B and W, Inc., and Adams-Campbell Company.

Done in Open Court Oct. 27, 1953.

/s/ WM. C. MATHES,
United States District Judge.

Approved as to Form:

/s/ THOS. E. SCOFIELD,
Attorney for Plaintiffs.

LYON & LYON,

By /s/ LEWIS E. LYON,
Attorneys for Defendants.

[Endorsed]: Filed October 28, 1953. [631]

[Title of District Court and Cause.]

NOTICE UNDER TITLE 35 USC 282

Counter-defendants hereby give notice that the following United States Patents will be relied upon as anticipations of Patents No. 2,338,372 and No. 2,374,317, and as showing the state of the art relating to each of said Patents under the general denial paragraph XI and paragraphs XII A and XII B of the Reply to Counter-claim of Defendants Wright and B & W:

Number, Inventor and Date:

202,570—Minnis, et al. .....April 16, 1918
764,684—Shaw .....July 12, 1904
1,317,350—Carden .....Sept. 30, 1919
1,342,618—Bashara .....June 8, 1920
1,371,425—Jones .....March 15, 1921
1,380,517—Bashara .....June 7, 1921
1,402,786—Muehl.....Jan. 10, 1922 [632]
1,423,625—Rogers .....July 25, 1922
1,572,769—Clark .....Feb. 9, 1926
1,806,073—McGregor, et al. .....May 19, 1931
2,151,416—Black, et al. .....Mar. 21, 1939
2,157,493—Miller, et al. .....May 9, 1939
2,190,145—Braden .....Feb. 13, 1940
2,220,237—Hall .....Nov. 5, 1940

Showing the State of the Art

Number, Inventor and Date:

115,047—Forker .....May 23, 1911
1,040,118—Bolt .....Oct. 1, 1912
1,598,771—Gerhardt .....Sept. 7, 1926
1,634,591—McGeekin .....July 5, 1927
1,677,050—Reed, et al. .....July 10, 1928

Supplementing paragraph XII C of the Reply to Counter-claim of Defendants Wright and B & W, Counter-defendants hereby give notice as to proof of previous invention, knowledge, and public use of the invention of Patent No. 2,338,372.

The method of Patent No. 2,338,372 was used in an oil well identified as Garner-Bristol No. 1, in

Kern County, California, in August, 1935, by the Mountain View Oil Corporation.

The names and residences of persons alleged to have invented or who have knowledge of this use are:

Jesse E. Hall, Sr.—Weatherford, Texas.

Ralph R. Hall—1025 Cherry Ave., Long Beach, California.

Roy G. Swearinger—320 Obispo, Long Beach, California.

Carl T. Park—1415 N. Chester, Compton, California.

Clay W. Miller—17508 Studebaker Road, Bellflower, California.

Chas. A. Brumbley—1401 N. Chester Ave., Compton, California. [633]

Chris Nelson—Taft, California.

Oscar Gay—50 Covina, Long Beach, California.

Supplementing paragraph XII C of the Reply to Counter-Claim of Defendants Wright and B & W, Counter-defendants hereby give notice as to proof of previous invention, knowledge, and public use of the invention of Patent No. 2,374,317.

The apparatus of Patent No. 2,374,317 was used in an oil well identified as Garner-Bristol No. 1, in Kern County, California, in August, 1935, by the Mountain View Oil Corporation.

The names and residences of persons alleged to have invented or who have knowledge of this use are:

Jesse E. Hall, Sr.—Weatherford, Texas.

Ralph R. Hall—1025 Cherry Ave., Long Beach, California.

Roy G. Swearinger—320 Obispo, Long Beach, California.

Carl T. Park—1415 N. Chester, Compton, California.

Clay W. Miller—17508 Studebaker Road, Bellflower, California.

Chas. A. Brumbley—1401 N. Chester Ave., Compton, California.

Chris Nelson—Taft, California.

Oscar Gay—50 Covina, Long Beach, California.

The apparatus of Patent No. 2,374,317 was also used by the Research and Development Department of the Union Oil Co. at Dominguez Hill, near Wilmington, California, during the month of November, 1939, and those persons alleged to have invented or who have knowledge of this use are as follows:

Kenneth A. Wright—130 N. Van Ness, Los Angeles, California.

Bruce Barkis—3120½ Holcombe Blvd., Houston, Texas.

Philip H. Jones—4457 Via Pinzon, Palos Verdes, Estates, California.

Dennis Berdine—c/o Union Oil Company, 617 W. 7th St., Los Angeles, California. [634]

Counter-defendants hereby give notice that the following United States Patents will be relied upon as anticipations of Patent No. 2,392,352 and as showing the state of the art relating to said Patents under the general denial paragraph XI and para-

graphs XII A and XII B of the Reply to Counter-Claim of Defendants Wright and B & W:

Number, Inventor and Date:

1,498,045—Lake, et al. .....June 17, 1924
2,014,563—Halliburton .....Sept. 17, 1935
2,087,297—Pew .....July 20, 1937
2,100,684—Carroll .....Nov. 30, 1937
2,116,408—O'Leary, et al. .....May 3, 1938
2,173,201—Guest .....Sept. 19, 1939
2,190,145—Braden .....Feb. 13, 1940
2,206,677—Shepler .....July 2, 1940
2,220,237—Hall .....Nov. 5, 1940
2,268,010—Baum .....Dec. 30, 1941
2,338,372—Wright .....Jan. 4, 1944
2,374,317—Wright .....Apr. 24, 1945

Supplementing paragraph XII C of the Reply to Counter-Claim of Defendant Wright and B & W, Counter-defendants hereby give notice as to proof of previous invention, knowledge, and public use of the invention of Patent No. 2,392,352.

The method of Patent No. 2,392,352 was used in the oil wells listed below:

Rosecrans Well No. 38 of the Union Oil Company in the Rosecrans Field, Los Angeles Basin, March, 1940;

Rosecrans Well No. 39 of the Union Oil Company in the Rosecrans Field, Los Angeles Basin, March, 1940.

The names and residences of persons alleged to have knowledge of these uses are: [635]

Bruce Barkis—3120½ Holcombe Blvd., Houston, Texas.

Kenneth R. Evans—Bakersfield, California.

Dated: Oct. 27, 1953.

THOMAS E. SCOFIELD,

PHILIP SUBKOW,

Attorneys for Plaintiffs & Counter-Defendants;

By /s/ THOS. E. SCOFIELD.

Receipt of copy acknowledged.

[Endorsed]: Filed October 28, 1953. [636]

In the United States District Court, Southern District of California, Central Division

Civil Action No. 7839-WM

JESSE E. HALL, et al.,

Plaintiffs,

vs.

KENNETH A. WRIGHT, et al.,

Defendants.

STIPULATION

It Is Hereby Stipulated by and between the parties and interveners in the above-entitled action, through their respective attorneys, that judgment shall be entered in this case, which judgment shall provide:

1st: That no contract was entered into on September 15, 1944, between Jesse E. Hall, plaintiff, and B & W, Inc., a California corporation, defendant, or Kenneth A. Wright, defendant, and that the instrument Exhibit A to the Second Amended Complaint filed herein on the 2nd day of January, 1953, (Plaintiff's Ex. 34 in evidence) never constituted an existing contract and there was never a meeting of the minds of Jesse E. Hall and Kenneth A. Wright and B & W, Inc., and that said instrument is declared void and subject to be and is hereby cancelled as of the time of execution of said instrument on [638] September 15, 1944, pursuant to Section 3412 of the Civil Code of California.

2nd: That neither plaintiff nor plaintiff-interveners, nor any of them, now have, and at no time had, any right, title, interest or license based upon or in any manner arising out of or under the purported agreement of September 15, 1944, Exhibit A to the Second Amended Complaint (Pltfs. Ex. 34 in evidence) or in or to United States Letters Patent No. 2,338,372, granted January 4, 1944, to Kenneth A. Wright, or in or to United States Letters Patent No. 2,374,317, granted April 24, 1945, to Kenneth A. Wright, or in or to United States Letters Patent No. 2,392,352, granted January 8, 1946, to Kenneth A. Wright, or in or to any other Letters Patent, domestic or foreign, granted to Kenneth A. Wright, and to B & W, Inc., or to either of them.

3rd: That defendants, nor any of them, do not now have, and at no time had, any right, title, in-

terest, or license based upon or in any manner arising out of or under the purported agreement of September 15, 1944, Exhibit A to the Second Amended Complaint (Pltfs. Ex. 34 in evidence) or in or to the applications of Jesse E. Hall, Serial No. 388,891, filed in the United States Patent Office on April 16, 1941, or in or to Serial No. 528,183, filed in the United States Patent Office on March 27, 1944, or in or to Serial No. 627,013, filed in the United States Patent Office on November 6, 1945, or in or to Serial No. 55,619, filed in the United States Patent Office on October 20, 1948, or in or to any Letters Patent of the United States issued upon any of said applications or in or to any other applications for Patents domestic or foreign, filed by or for plaintiff and plaintiff-interveners or any one or more of them, or in or to any other Letters Patent, domestic or foreign, granted to plaintiff and plaintiff-interveners or any one or more of them. [639]

4th: That the sum of $1,143.40, representing royalties heretofore paid by plaintiff to defendants in accordance with the provisions of paragraph 4 of Exhibit A to the Second Amended Complaint (Ex. 34 in evidence), together with the sum of $550.26, being interest thereon, be returned by defendant B & W, Inc., to Jesse E. Hall, Sr.

5th: That all signed copies of the instrument Exhibit A to the Second Amended Complaint (Ex. 34 in evidence) be ordered forthwith delivered to the Clerk of this Court to be by him marked "Can-

celed," and that said cancellation shall be deemed to be a cancellation under seal and said copies to thereafter remain in the custody of the Clerk of this Court.

6th: That Counts 1, 2, 3, 4, commencing on line 22 on page 3 and ending on line 17 on page 10, and Count 6, commencing on line 5 on page 12 and ending on line 13 on page 12 of the Second Amended Complaint be dismissed with prejudice, provided that such dismissal shall not prejudice in any way or manner any other claim or other cause of action of any party which is not based or grounded upon the purported agreement Exhibit A to the Second Amended Complaint (Ex. 34 in evidence) and provided further that such dismissal shall not prejudice in any way or manner any defense of any party, not based or grounded upon said purported agreement, to any claim asserted against such party.

7th: That all causes of action set forth in paragraph XVIII of the Second Amended Complaint, commencing at line 27 and ending at line 4 on page 12, of said Complaint, be dismissed with prejudice, provided that such dismissal shall not prejudice in any way or manner any other claim or other cause of action of any party which is not based or grounded upon the purported agreement Exhibit A to the Second Amended Complant (Ex. 34 in evidence), and provided further that such dismissal shall not prejudice in [640] any way or manner any defense of any party, not based or grounded upon said purported agreement, to any claim asserted against such party.

8th: That the Counter-Claim for Declaratory Judgment and Relief set forth in the Answer and Counter-claim of defendants B & W, Inc., and Kenneth A. Wright, commencing at line 10 on page 10, and ending on line 9, page 14, of said Answer and Counter-Claims, and that the Counter-Claims for Violation of the Sherman Anti-Trust Act, commencing at line 12 of page 16, and ending at line 15 of page 18, be each dismissed with prejudice, provided that such dismissal shall not prejudice in any way or manner any other claim or other cause of action of any party which is not based or grounded upon the purported agreement Exhibit A to the Second Amended Complaint (Ex. 34 in evidence) and provided further that such dismissal shall not prejudice in any way or manner any defense of any party, not based or grounded upon said purported agreement, to any claim asserted against such party.

9th: That all causes of action set forth in said Second Amended Complaint against the following named defendants be dismissed with prejudice:

Adams-Campbell Co., Ltd., a California corporation;

Califonia Spring Co., Inc., a California corporation;

Roland E. Smith;

provided that such dismissals shall not prejudice in any way or manner any claim or cause of action of any remaining party which is not based or grounded upon the purported agreement Exhibit A

to the Second Amended Complaint (Ex. 34 in evidence) and provided further that such dismissals shall not prejudice in any way or manner any defense of any remaining party, not based or grounded upon said purported agreement, to any claim asserted against such party. [641]

10th: That either party may record or otherwise spread this judgment upon the records of any administrative or judicial body, domestic or foreign.

11th: And for such other relief of any of the parties as this Court may deem equitable and just.

Dated at Los Angeles, California, this 9th day of November, 1953.

/s/ THOS. E. SCOFIELD,

/s/ PHILIP SUBKOW,

Attorneys for Plaintiff and Plaintiff-Interveners.

LYON & LYON,

/s/ LOUIS E. LYON,

/s/ RICHARD F. LYON,

Attorneys for Defendants and Counter-Claimants.

It Is So Ordered November 9th, 1953.

/s/ WM. C. MATHES,

U. S. District Judge.

[Endorsed]: Filed November 9, 1953.

Judgment docketed and entered November 10, 1953. [642]

[Title of District Court and Cause.]

PLAINTIFFS' CHARGES OF UNFAIR COMPETITION AGAINST DEFENDANTS AND PROOFS THEREON

Unfair Competition Cause

Charge:

1. Threats and notices of infringement of the Wright process Patent No. 2,338,372 made to plaintiff, plaintiffs' customers, since 1947, and customers of plaintiff's licensees since 1949, in the United States without intent to sue.

Evidence

(Oral and Documentary)

Exhibits and Testimony in Evidence:

(a) Exhibits Nos. 4, 9, 16, 17, 18, 19, 20, 21, 26, 37, 44, 45, 55, 56, 101, 107, 108, 109.

(b) Deposition of Houghton, Exhibit No. 87, and Exhibits Nos. 60, 61, and 62 filed therewith.

(c) Deposition of Teplitz, Exhibit No. 89, and Exhibits Nos. 64 to 66, inc., filed therewith. [643]

(d) Deposition of Vollmer, Exhibit 90.

(e) Depositions of Somner, et al. Exhibit 91, and Exhibits 95, 96, and 103 filed therewith.

Exhibits to Be Offered

(f) Letter 10/23/47 Hall to Amerada Petroleum Corporation.

(g) Letter 5/13/47 Hall to Gulf Oil.

(h) Letter 11/18/47 Bell to Wfd. Sprg. Co.

(i) Letter 11/20/47 Hall to Bell.

(j) Hall application Serial No. 38,891, filed 9/3/35.

(k) Hall Patent No. 2,220,237.

(l) Letter 3/24/42 Hall to English.

(m) Oral testimony of Hall.

(n) Oral testimony and exhibits to show loss of sales.

2. Interference with the business of plaintiff and licensees of plaintiff by use of Wright Patent No. 2,338,372 to obtain a limited monopoly in the manufacture and sale of scratchers not covered by the patent and in a process not covered by the patent with no intent to sue, and get an unfair trade advantage in the sale of B & W "Multiflex" and "NuCoil" scratchers.

Evidence

(Oral and Documentary)

Exhibits and Testimony in Evidence:

Same as Charge No. 1.

Exhibits to Be Offered

(a) Assignments Nov., 1948, Hall to Parker Ind. Products. [644]

(b) Agreement 12/15/48, Parker Ind. Products-Weatherford Oil Tool.

(c) Agreement 5/1/49, Hall-Nevada Leaseholds.

(d) Assignments Hall to Nevada Leaseholds.

(e) Supplemental Agreement 5/28/49, Hall-Nevada Leaseholds.

(f) Agreement 6/15/49, Nevada Leaseholds-Weatherford Oil Tool.

(g) Agreement 6/28/51, Hall-Nevada Leaseholds-Weatherford Oil Tool.

(h) Reassignments June, 1931, Nevada-Leaseholds to Hall.

(i) Letter 12/30/52, Weatherford-International to Weatherford Oil Tool.

(j) Agreement 3/24/53, Weatherford International-Weatherford Oil Tool-Hall.

(k) Dissolution Nevada Leaseholds.

(l) Letter agreement 7/14/47, Hall-Weatherford Spring of Venezuela.

(m) Letter agreement 10/11/51, Hall-Weatherford Spring of Venezuela.

(n) Agreement 4/2/52, Hall-Weatherford International.

(o) Agreement 5/23/52, Hall-Weatherford International.

(p) Agreement 3/21/53, Hall-Weatherford International.

(q) Agreement 5/28/53, Weatherford International-Hall Development; Weatherford Spring of Venezuela-Hall.

(r) Exhibits to show loss of sales. [645]

3. The prosecution of trumped up proceedings in the United States Patent Office from February, 1949, to delay issuance of a patent to plaintiff,

thereby unfairly competing with plaintiff and damaging the business relationship between plaintiff and his licensees and and gain an unfair trade advantage in the sale of B & W scratchers and centralizers, said proceedings including:

(a) Protests to the Patent Office dated 2/26/49, and 7/28/49.

(b) Interference No. 84411.

(c) Petitions to strike Hall applications Serial Nos. 388,891; 627,013; 55,619, dated 4/11/51, and 1/22/52.

(d) Public Use Proceedings.

Evidence

(Oral and Documentary)

Exhibits and Testimony in Evidence:

Exhibits: Re(b) 69, 70, 71A, 71B; Re(c) 6, 24, 119; Re(d) 6, 24, 119.

Exhibits and Testimony to Be Offered

Exhibits:

Re(a) 131; Re(b) 132; Re(c) 133-134; Re(d) 135; Re(b, c, b) Scofield Memo 8/26/46.

4. The filing and dismissal without intention to prosecute actions against plaintiffs' licensee and its distributors in Oklahoma City, Forth Worth, and Houston, by Scratchers, Inc., and exploiting such litigation with licensee's customers to unfairly [646] compete and damage the business relationship between plaintiff and its licensee.

Evidence to Be Offered

(a) Black & Stroebel Patent No. 2,151,416.
(b) Title Report.
(c) Exhibit 143-CA 4942, Oklahoma City.
(d) Exhibit 144-CA 2064, Fort Worth.
(e) Exhibit 145-CA 5827, Houston.
(f) Oral testimony as to loss of sales.

5. Threats and notices of infringement sent customers of the Wright Canadian Patent No. 472,-221 without intent to sue.

Evidence

(Oral and Documentary)

Exhibits and Testimony in Evidence:

(a) Deposition of Houghton and Littlehales. Exhibits 92 and 73 to 84, inc., filed therewith.
(b) Exhibits Q; Q1; Q2; QQ; 106; 140; 141.
(c) Oral testimony of John Hall.

Exhibits and Testimony Not in Evidence:

(d) Exhibits 136; 137; 138; 139; 142.
(e) Oral testimony and exhibits showing loss of sales.

Exhibits in Evidence:

(a) Exhibit WW. [647]

Defenses to the Counter-claims for Infringement

Defenses:

1. Non-infringement.

Evidence
(Oral and Documentary)

Patent No. 2,338,372, Exhibits 9, 37.
Patent No. 2,374,317, Exhibits 8, 38.
Patent No. 2,392,352, Exhibit 39.
Oral testimony of Hall.

2. Invalidity of Wright.

Patent No. 2,338,372.

Evidence
(Oral and Documentary)

Prior art patent pleaded in Notice filed 10/28/53, supplementing plaintiff's answer to defendants' counter-claim for infringement.

Prior Invention and Use—Mountain View Oil Corp.

Oral testimony; depositions and exhibits set forth in notice filed 10/28/53.

3. Invalidity of Wright Apparatus Patent No. 2,374,317.

Evidence
(Oral and Documentary)

Prior art patents pleaded in notice filed 10/28/53, supplementing plaintiff's answer to defendants' counter-claim for infringement.

Prior Invention and Use—Mountain View Oil Corp.

Oral testimony; depositions and exhibits set forth in notice filed 10/28/53.

Union Oil Co.—Jones & Berdine Tests. [648]
Report of Berdine of November, 1939.
Oral testimony of witnesses listed in notice filed 10/28/53.

4. Invalidity of Wright Patent No. 2,392,352.

Evidence
(Oral and Documentary)

Prior art patents pleaded in notice filed 10/28/53, supplementing plaintiff's answer to defendant's counter-claim for infringement.

Public Use—Union Oil Co., March, 1940. Rosecrans Wells Nos. 38 and 39. Testimony and Exhibits Barkis and K. R. Evans.

THOMAS E. SCOFIELD,
PHILIP SUBKOW,
By /s/ THOMAS E. SCOFIELD,
Attorneys for Plaintiffs.

Receipt of Copy acknowledged.

[Endorsed]: Filed November 17, 1953. [649]

[Title of District Court and Cause.]

NOTICE UNDER LOCAL RULE 35 OF PENDENCY OF OTHER ACTIONS OR PROCEEDINGS

Pursuant to the provisions of local Rule 35, defendants herein notify the Court of the pendency of the following actions and proceedings now pending or which have been pending during the pendency of this action and which comprise a material part of the subject matter of this action:

(1) United States District Court, Southern District of Texas, Houston Division. Weatherford Oil Tool Company, Plaintiff, vs. B & W, Inc., and Bruce Barkis, Defendants. Civil Action No. 5168.

(2) United States District Court, Southern District of Texas, Houston Division, Weatherford Oil Tool Company, Inc., Plaintiff, vs. B & W, Inc., Defendant. Civil Action No. 6797.

(3) In the Exchequer Court of Canada, Weatherford Limited, Plaintiff, vs. Import Tool Company Limited, Delbert Doyle Lewis, Delbert Darby Lewis, Defendants, No. 61365. Filed March 10, 1952.

(4) In the Exchequer Court of Canada, Hall Development Company of Venezuela, C. A., Plaintiff, vs. B. and W., Inc., Defendant, No. 53422. Filed August 15, 1951.

(5) Proceedings before the United States Patent Office, including:

(a) Interference No. 84,411, Hall vs. Wright.

(b) Petition on behalf of the parties B & W, Inc., to strike from the files of the United States Patent Office the applications of Hall, Serial Nos. 388,891, 627,013 and 55,619 as having been filed in the United States Patent Office in fraud and in violation of the Statutes of the United States and the rules of the Patent Office.

(c) Public Use Proceedings before the United States Patent Office now pending and awaiting decision.

(6) Court of First Instance on Civil and Mercantile Matters (Federal Court) of Venezuela. Jesse Elmer Hall, Plaintiff, vs. Vacuum Truck Service, C. A., Defendant. Filed November 7, 1951.

(7) Court of First Instance, Commercial Branch of Venezuela, Federal District. Jesse Elmer Hall, Plaintiff, vs. Kenneth A. Wright and B & W, Inc., Defendants.

(8) An action the precise title of which we do not have which was filed in the Federal Court for the Republic of Venezuela (Supreme Court) wherein Jesse E. Hall, Sr., appealed to the Supreme Court for the annulment of a resolution of the Ministerio de Formento of September, 1951, published on page 242 of the Bulletin of Industrial and Commercial Property and pursuant to which resolution the opposition of Jesse E. Hall of the grant of Venezuelan Patent No. 4983 to B & W, Inc., and Kenneth A. Wright was dismissed and

pursuant to which action the Supreme Court, by a judgment of October 19, 1953, has dismissed this action instituted by Jesse E. Hall.

(9) An action instituted in Mexico in the Federal Court by Hall against the Commissioner of Patents and B & W, Inc., to set aside a decision of the Patent Office Commissioner of Mexico that the Hall Patent No. 47661 lacked novelty.

In the first action instituted in Texas, No. 5168, suit was instituted on behalf of Weatherford Oil Tool Company against B & W, Inc., and Bruce Barkis, asserting as its issues the issue of Unfair Competition, Anti-trust violation, and seeking declaratory relief with reference to the claim of patent infringement. The complaint in this action did not mention or plead a claim of license from Jesse E. Hall, Sr.

By counterclaim and answer, the defendants put into issue all of the issues of this present action. Subsequent to the dismissal by stipulation of the Houston action, No. 5168, there was filed on May 13, 1952, in the United States District Court, Southern District of Texas, Houston Division, Civil Action No. 6797, on behalf of Weatherford Oil Tool Company, Inc., against B & W, Inc., a complaint for Declaratory Judgment with reference to the asserted claim of B & W, Inc., of the Letters Patent involved in this action; and for a Second Cause of Action, an action for Unfair Competition and asserting a violation of the Anti-trust laws; in

fact, involving every issue of this case as established by the pleadings prior to the stipulation of November 9, 1953, other than the contract issues.

In this Texas action, Weatherford Oil Tool Company, Inc., plaintiff, did not assert nor plead that it was licensed by Jesse E. Hall, Sr. However, this issue was placed before the Texas court by the defendants' Answer and Counterclaim so that at the present time there stands at issue before the District Court in Houston every issue which was pleaded in this case prior to the filing of the said stipulation and order of November 9, 1953.

Defendants, B & W, Inc., in two petitions filed before the court in Houston, sought to remove or to transfer that action to the United States District Court for the Southern District of California, Central Division, and the position of the case in Houston is as established by the order of the court of April 18, 1953:

"April 18, 1953: Defendant's renewed Motion to Transfer Action, denied. However, Defendant's Motion to stay proceedings in this case until judgment has beeen rendered in the United States District Court for the Southern District of California, Central Division, in the case of Weatherford Oil Tool Company vs. B. & W., Inc., and Bruce Barkis, Civil Action No. 5168, is granted."

(It is obvious that the case cited in the above order is in error as the case filed in the United

States District Court, Southern District of California, Central Division, is Hall vs. Wright and B & W, Inc., Civil Action No. 7839-WM).

Canada

The case of Weatherford Limited vs. Import Tool Company, et al., was filed before the Exchequer Court of Canada on March 10, 1952, alleging the existence of the purported contract of September 15, 1944, and the fact that Weatherford Limited has a license in Canada under the B & W, Inc., Canadian patents and asserting "Any devices sold by Import Tool Company Limited have been sold with the license, permission and consent of the patentee."

The Import Tool Company Limited and Delbert Doyle Lewis and Delbert Darby Lewis, defendants in this action, are the distributors of B & W equipment in Canada.

A further case pending before the Exchequer Court of Canada is entitled Hall Development Company of Venezuela, C. A., plaintiff, vs. B. & W., Inc., Defendant. In this action, contrary to the pleadings in the case above enumerated, the plaintiff-intervener here seeks the declaration of invalidity of the B & W, Inc., Canadian patents.

United States Patent Office

(a) An Interference No. 84,411, was declared in the United States Patent Office between the applications of Jesse E. Hall and Kenneth A. Wright,

(Hall application Serial No. 556,190 and Wright application Serial No. 777,640). This interference was declared with respect to the claims which the Board of Appeals had erroneously allowed in the Hall application, Serial No. 55,619 and which claims plaintiffs here had broadcast to the industry. This interference was terminated.

(b) The petitions filed on behalf of Wright and B & W, Inc., to strike the Hall applications, Serial Nos. 388,891, 627,013 and 55,619 from the files of the United States Patent Office as having been filed fraudulently contrary to the provisions of the law and with respect to these petitions there is the decision of the Assistant Commissioner Murphy of the United States Patent Office of September 9, 1952, holding that the application, Serial No. 627,013 was filed in fraud and issuing an order to show cause against Hall as to why the said application should not be stricken from the files of the United States Patent Office. This matter is now pending before the Patent Office awaiting decision, together with the next mentioned matter and upon which arguments have been had and the matter stands submitted to the Patent Office as of August 14, 1953.

(c) Public Use Proceedings instituted by B & W Inc., seeking to show to the Patent Office that the subject matter of the claims allowed to Hall in the application, Serial No. 55,619, by the Board of Appeals in its decision of January 30, 1952, had been on sale and in public use more than a year before the filing of the applications. This matter

of public use is dealt with by the Commissioner of Patents, by the Assistant Commissioner's decisions of September 9, 1952, and December 9, 1952, and is awaiting decision, the matter having been submitted to the Patent Office for decision after oral argument before a five-man Board of the Patent Office on August 14, 1953.

Venezuela

An action instituted in the Court of First Instance on Civil and Mercantile Matters in Anzoategui on November 7, 1951, by Jesse Elmer Hall against the Vacuum Truck Service, C. A., in which action an interdicto (injunction) was granted stopping the sale in Venezuela of scratchers by B & W, Inc., and through its distributor, Vacuum Truck Company, and which interdicto was subsequently dissolved by decision of the Superior Court (i.e., the First Appeal Court in Venezuela) and the action of the First Appeal Court of Venezuela having been affirmed by the Supreme Court of Venezuela.

The second action instituted in Venezuela in the City of Caracas in the Court of First Instance, the Federal Court of Venezuela, entitled Jesse Elmer Hall vs. Kenneth A. Wright and B & W, Inc., seeks to enforce the Venezuelan Patent No. 3722 granted to Hall in Venezuela and corresponding in disclosure and claims to the application, Serial No. 627,013 filed in the United States Patent Office, and against which an order to show cause has been

issued against Hall to show cause why the 627,013 application should not be stricken from the files of the United States Patent Office as based upon fraud.

The third action, the precise title of which we do not have, which was filed in the Federal Court for the Republic of Venezuela (Supreme Court) wherein Jesse E. Hall, Sr., appealed to the Supreme Court for the annulment of a resolution of the Ministerio de Fomento of September, 1951, published on page 242 of the Bulletin of Industrial and Commercial Property and pursuant to which resolution the opposition of Jesse E. Hall of the grant of Venezuelan Patent No. 4983 to B & W, Inc., and Kenneth A. Wright was dismissed and pursant to which action the Supreme Court, by a judgment of October 19, 1953, has dismissed this action instituted by Jesse E. Hall.

Mexico

An action instituted by Jesse E. Hall against the Commissioner of Patents in Mexico and B & W, Inc., to set aside a decision of the Patent Office Commissioner that the Hall Mexican Patent No. 47661 lacked novelty, which proceedings were taken and instituted by B & W, Inc., under the provisions of the Mexican Patent Law and in which action a decision has been rendered by the Federal Court for the Republic of Mexico on approximately June 30, 1952, sustaining the position taken by the Patent Office Commissioner of Mexico. The precise

title and action number, if any, assigned is not here available.

November 16, 1953.

LYON & LYON,

By /s/ LEWIS E. LYON,
Attorneys for Defendants.

[Endorsed]: Filed November 17, 1953.

[Title of District Court and Cause.]

AMENDMENT TO SECOND AMENDED COMPLAINT AND SUPPLEMENTAL COMPLAINT

Seventh Cause of Action

As a separate and additional Cause of Action, plaintiff Jesse E. Hall, complains and alleges:

I.

Plaintiff, Jesse E. Hall, adopts the allegations of Paragraph I, of the Second Amended Complaint, relating to Jesse E. Hall and defendants Kenneth A. Wright and B & W, Inc., as if fully set forth herein.

II.

That this Seventh Cause of Action arises under the Patent Laws of the United States and that some of the acts of infringement herein complained of, have been committed within the Southern District of California, where the said Kenneth A. [651]

Wright resides, and defendant B & W, Inc., has an established place of business and that said defendants have submitted themselves to the jurisdiction of this Court.

III.

That on March 9, 1954, Letters Patent 2,671,515 were duly and legally issued to plaintiff, Jesse E. Hall, for Well Bore Cleaning Scratcher.

IV.

That plaintiff, Jesse E. Hall, is now and on March 9, 1954, and at all times thereafter was the owner of said patent No. 2,671,515.

V.

That defendant, B & W, Inc., has infringed and defendant, Kenneth A. Wright and defendant B & W, Inc., have conspired with each other to infringe, and each has separately and have jointly induced others to infringe the said U. S. Letters Patent 2,671,515, by manufacturing and selling and inducing others to sell and use the scratchers sold by defendant B & W, Inc., under the designation Multiflex and Nu-Coil.

Wherefore, Plaintiff prays for judgment:

1. That the said U. S. Letters Patent 2,671,515 are good and valid in law.

2. That the defendants have infringed the said Letters Patent No. 2,671,515.

3. During the pendency of this action and permanently thereafter enjoining defendants and each

of them and their several attorneys, agents, representatives, employees and officials, and those acting in concert with them from infringing the said Letters Patent.

4. For damages suffered by plaintiff as the result of such infringement.

5. For an accounting of profits obtained by defendants [652] from said infringement.

6. For costs of suit incurred by plaintiffs in this cause.

7. For reasonable attorneys' fees.

8. For all further and additional relief which this Court shall deem meet and just in the premises.

THOMAS E. SCOFIELD,

PHILIP SUBKOW,

By /s/ THOMAS E. SCOFIELD,
Attorneys for Plaintiffs.

Nunc Pro Tunc as of March 17, 1954.

[Endorsed]: Filed March 18, 1954. [653]

[Title of District Court and Cause.]

SUPPLEMENTAL ANSWER AND COUNTER-CLAIM

Comes now defendants, B & W, Inc., and Kenneth A. Wright, and supplement their answer and

counter-claim and state and allege as a supplemental counter-claim pursuant to the granting of the motion made by defendants in open court for leave to file this supplemental pleading on March 17, 1954, and which motion was granted by the Court:

I.

That defendant-counter-claimant, B & W, Inc., is a California corporation organized and existing under the laws of the State of California, having a place of business at Long Beach, California, and Houston, Texas; that Kenneth A. Wright, is a citizen and resident of Los Angeles, California; that plaintiff-counterdefendant, Jesse E. Hall, is a citizen and resident of the State of Texas; that Weatherford Oil Tool Co., Inc., [654] is a Texas corporation of Houston, Texas; Weatherford Spring Company of Venezuela, C. A., is a Venezuelan corporation of Maracaibo, Venezuela; Hall Development Company, C. A., is a Venezuelan corporation of Maracaibo, Venezuela; Weatherford, Ltd., is a corporation of the Province of Alberta, Canada; Weatherford Internation, S. A. de C. V., is a corporation of Mexico, of Tampico, Mexico; Nevada Leasehold Corporation, is a Nevada corporation of Las Vegas, Nevada; Parker Industrial Products, Inc., is a Texas corporation of Parker County, Texas.

2.

There has been granted and issued by the United States Patent Office Letters Patent No. 2,671,515 to Jesse E. Hall on March 9, 1954, which patent was

issued containing three claims, which are respectively claims 23, 24 and 31 of Exhibit 69 here in issue; that said Letters Patent were issued erroneously by the Commissioner of Patents and in violation of his duties as Commissioner of Patents and contrary to the provisions of law with respect to the issuance of Letters Patent.

3.

That a controversy exists between plaintiffs and defendants with respect to the validity, scope and infringement of the claims of the said Letters Patent.

4.

That defendant-counterclaimants assert that said Letters Patent No. 2,671,515 are invalid and void as to each and every claim thereof for each and all of the following set forth reasons:

(a) Jesse E. Hall is not the first inventor of the subject matter set forth in and by the aforesaid claims [655] but the subject matter of the claims is and was the invention of Kenneth A. Wright.

(b) That Jesse E. Hall, Sr., was not the first and prior inventor of the subject matter of the claims of the said Letters Patent within the requirements of Section 102 of the Patent Codification Act of July 19, 1952, 35 U.S.C. 1953 Ed. Section 102.

(c) That Jesse E. Hall has perpetrated upon the United States Patent Office a fraud in the solicitation of the grant of the said Letters Patent and as to each of claims 1, 2 and 3 of the said Letters

Patent in that Hall knowingly solicited the said Letters Patent, knowing that he was not the first and sole inventor of the said subject matter thereof.

(d) That said Letters Patent No. 2,671,515 are invalid and void as anticipated by the following Letters Patent:

Kenneth A. Wright, Patent No. 2,338,372, granted January 4, 1944;

Kenneth A. Wright, Patent No. 2,374,317, granted April 24, 1945;

Kenneth A. Wright, Patent No. 2,392,352, granted January 6, 1946.

(e) That as to the use of coil springs within the scratcher wire not claimed in the said Hall patent or in claims 1, 2 and 3 thereof, the said subject matter is shown and disclosed in the prior patents to Black and Stroebel, No. 2,151,416, of March 21, 1939, and the aforementioned and set forth listed patents to Kenneth A. Wright.

(f) That the Letters Patent in suit are invalid and void as not filed within the statutory period required for the filing of the Letters Patent as provided for by 35 U.S.C. Sec. 102 and within the period of time within which the said invention was in public use and on sale in the United States by: [656]

(a) B & W, Inc.
(b) Weatherford Spring Co.
(c) Jesse E. Hall, Sr.
(d) Weatherford Oil Tool Co., Inc.

(e) Union Oil Company.

(f) Thomas Kelly & Sons.

5.

That defendants have not infringed said Letters Patent or any claim thereof.

Wherefore, defendants-counterclaimants pray judgment:

(1) That the Letters Patent No. 2,671,515 are invalid and void as to each and all of the claims thereof.

(2) That defendants have not infringed said Letters Patent No. 2,671,515, or any claim thereof.

(3) That plaintiff, Jesse E. Hall, Sr., has perpetrated a fraud upon the United States Patent Office in the solicitation of the grant of the Letters Patent No. 2,671,515 to the damage of these defendants.

(4) That defendants-counterclaimants recover their costs incurred herein and for such other and further relief as to the Court may seem just.

B & W, INC.,

KENNETH A. WRIGHT,

Defendants-Counterclaimants;

By /s/ LEWIS E. LYON,

Their Attorney.

Of Counsel:

LYON & LYON,

RICHARD F. LYON.

Nunc pro tunc as of March 17, 1954.

[Endorsed]: Filed March 18, 1954. [657]

[Title of District Court and Cause.]

REPLY TO SUPPLEMENTAL ANSWER AND COUNTER-CLAIM

I.

Answering Paragraph 1, Plaintiffs admit the allegations of Paragraph 1.

II.

Answering Paragraph 2, Plaintiffs admit that United States Patent No. 2,671,515 was issued to Jesse E. Hall on March 9, 1954, containing claims which are respectively Claims 23, 24 and 31 of Exhibit 69 in issue here, and deny all other allegations of Paragraph 2.

III.

Answering Paragraph 3, Plaintiffs admit that a controversy exists with respect to the validity and scope of and infringement of the claims of said Letters Patent under the U.S.C. Title 28, Sections 2201 and 2202 and the Patent Laws of the United [658] States.

IV.

Answering Paragraph 4, plaintiffs deny each and every allegation of Paragraph 4 and all its subdivisions.

V.

Answering Paragraph 5, plaintiffs deny each and every allegation of Paragraph 5.

Wherefore, plaintiffs pray judgment:

(1) That said Letters Patent No. 2,671,515 are

good and valid in law as to each and all of the claims thereof.

(2) That defendants have infringed and are infringing each and all claims of said patent.

(3) That the supplemental counter-claim be dismissed and defendants take nothing by said counter-claim.

(4) That defendants and their officers, employees, agents and attorneys be enjoined pending the determination of this action and permanently thereafter from making, using, or selling any infringing devices.

(5) For reasonable attorneys' fees and costs.

(6) For an accounting of all profits obtained by defendants by said infringement.

(7) For damages suffered by plaintiffs as a result of said infringement.

(8) For all other and further relief as may be deemed meet and just in this cause.

THOMAS E. SCOFIELD,

PHILIP SUBKOW,

Attorneys for Plaintiffs;

By /s/ THOS. E. SCOFIELD.

[Endorsed]: Filed March 18, 1954. [659]

[Title of District Court and Cause.]

MEMORANDUM OF DECISION

THOMAS E. SCOFIELD, ESQ.,
PHILIP SUBKOW, ESQ.,

For Plaintiff and Plaintiff-Interveners. [660]

LYON & LYON,
LEWIS E. LYON, and
RICHARD F. LYON,

For Defendants and Counter-Claimants.

Mathes, District Judge:

After a partial trial of the issues raised by the original pleadings, both sides were permitted to file amended and supplemental pleadings and new parties were brought in. [Fed. Rules Civ. Proc., Rules 15, 21, 24, 28 U.S.C.A.]

The case then proceeded to trial upon the issues raised by: (1) the second amended complaint for (a) reformation and cancellation of, damages for breach of, and a declaratory judgment as to rights and duties under, an alleged contract dated September 15, 1944, between plaintiff Jesse E. Hall and defendant Kenneth A. Wright, (b) treble damages for alleged violations of the antitrust laws, (c) damages and injunctive relief for alleged unfair competition, and (d) an accounting; (2) the "Answer of defendants Roland E. Smith, Adams-Campbell Co., Ltd., and California Spring Co., Inc.," and (3)

the "Answer and Counter-Claims of defendants Kenneth A. Wright and B & W., Inc., to the Second Amended Complaint."

Plaintiff invoked the jurisdiction of this court upon the ground of diversity of citizenship [see 28 U.S.C. §§1332, 2201-2202], and under the Clayton Act [see 15 U.S.C. §§ 1-3, 15, 26]. [661]

While plaintiff and plaintiff-interveners were presenting evidence upon their case-in-chief, the parties reached a stipulation for partial judgment declaring that the alleged agreement of September 15, 1944, never constituted a contract between the parties Hall and Wright, and dismissing with prejudice: (a) all causes of action asserted against defendants Roland E. Smith, Adams-Campbell Co., Ltd., and California Spring Co., Inc., (b) all causes of action other than that for unfair competition asserted against defendants Wright and B & W, Inc., and (c) the counter-claims asserted by defendants Wright and B & W, Inc., for damages for alleged violations of the antitrust laws and for declaratory relief:

The trial then continued upon the issues raised by (1) the fifth cause of action asserted in the second amended complaint grounded upon alleged unfair competition, and (2) the counter-claims of defendants Wright and B & W, Inc., for unfair competition and for alleged infringement of (a) Letters Patent No. 2,338,372 ["Method for Conditioning Well Bores"], issued January 4, 1944, to defendant Wright and later assigned to defendant B & W, Inc.,

(b) Letters Patent No. 2,374,317 ["Well Production Equipment"—wall cleaning guide], issued April 24, 1945, to defendant Wright and later assigned to defendant B & W, Inc., and (c) Letters Patent No. 2,392,352 ["Method of Placing Cement Plugs in Well Bores"], issued [662] January 8, 1946, to defendant Wright and later assigned to defendant B & W, Inc., and (3) the reply of plaintiff and plaintiff-interveners to these counter-claims.

Near the close of the trial, Letters Patent No. 2,671,515 ["Well Bore Cleaning Scratcher"], issued to plaintiff Jesse E. Hall on March 9, 1954. Since the claimed invention covered by this patent and the Patent Office proceedings upon the application had previously been the subject of extended testimony in the case, leave was granted plaintiff Hall to file an amendment supplementing the second amended complaint by adding thereto as the "Seventh Cause of Action" a claim against defendants Wright and B & W, Inc., for alleged infringement of this newly-issued Hall patent.

Defendants Wright and B & W, Inc., filed a supplemental answer denying infringement, with a counter-claim against plaintiff and plaintiff-interveners for a declaratory judgment that Letters Patent No. 2,671,515 to Hall "are invalid and void as to each and all of the claims thereof." Plaintiff and plaintiff-interveners filed a reply to this counter-claim.

The trial then proceeded and, upon conclusion, the case was submitted for decision upon the issues

raised by the amended and supplemental claims and counter-claims for unfair competition, patent infringement, and declaratory relief. [663]

Among the acts of unfair competition claimed by plaintiff and plaintiff-interveners is the allegation that defendants Wright and B & W, Inc., both before and during the pendency of this litigation, have unfairly and without cause notified customers of plaintiff and plaintiff-interveners that the customers infringed the monopoly of the Wright Method Patent No. 2,338,372 by the use of scratchers in the cementing operations incident to completion of oil wells.

The evidence sustains the charge, since it is clear that the notices were given, directly and indirectly, without any intent that the notices serve as a preliminary to suit. Moreover, the notices were not given in good faith since Patent No. 2,338,372 does not teach or claim or even mention any method of carrying on the cementing operations incident to the completion of an oil well. [Cf. Morton Salt Co. v. Suppiger Co., 314 U.S. 488 (1942); B. B. Chemical Co. v. Ellis, 314 U.S. 495 (1942); Schriber Co. v. Cleveland Trust Co., 311 U.S. 211 (1940); Dehydrators Ltd. v. Petrolite Corp., 117 F. 2d 183 (9th Cir. 1941); Celite Corp. v. Dicalite Co., 96 F. 2d 242 (9th Cir.), cert. denied, 305 U.S. 633 (1938); Circle S Products Co. v. Powell Products, 174 F. 2d 562 (7th Cir. 1949); Metro-Goldwyn-Mayer Corp. v. Fear, 104 F. 2d 892 (9th Cir. 1939); Adriance Platt

& Co. v. National Harrow Co., 121 F. 827 (2d Cir. 1903)]. [664]

On the other hand, among the acts of unfair competition claimed by defendants Wright and B & W, Inc., is the allegation that plaintiff and plaintiff-interveners, during the pendency of this action, have notified the trade, "without probable cause, that they were entitled to an accounting from the trade for all Multiflex and Nu-Coil scratchers which the trade purchased from B & W, Inc., and that they were entitled to a royalty of $2.50 per scratcher from the trade for each Multiflex and Nu-Coil scratcher purchased by the trade."

The evidence also sustains this charge, since it is clear that the notices were given without any intent that the notices serve as a preliminary to suit. Here, too, the notices were not given in good faith; a royalty of $2.50 per $8.00 scratcher would not be within the bounds of economic reason.

These and other claims of unfair trade practices are asserted, each side against the other, with each invoking the equity jurisdiction of this Court [Briggs v. United Shoe, etc., Co., 239 U.S. 48, 50 (1915); Rees v. Watertown, 19 Wall. (86 U.S.) 107, 122 (1873)] upon the ground of diversity of citizenship. [28 U.S.C. §1332.] Hence the substantive law of California governing tortious conduct commonly referred to as unfair competition—unfair trade practices—is to be applied. [Pecheur Lozenge Co. v. National Candy Co., [665] 315 U.S. 666, 667 (1942); Fashion Originators Guild v. Federal Trade Com-

mission, 312 U.S. 457, 468 (1941); Franke v. Wiltschek, 209 F. 2d 493, 494 (2d Cir. 1953); Cridlebaugh v. Rudolph, 131 F. 2d 795 (3d Cir.), cert. denied, 318 U.S. 779 (1942); Zephyr American Corp. v. Bates Mfg. Co., 128 F. 2d 380 (3d Cir. 1942).]

Section 3369 of the Civil Code of California provides in part that: "Any person performing or proposing to perform an act of unfair competition within this State may be enjoined in any court of competent jurisdiction * * * unfair competition shall mean and include unfair or fraudulent business practice and unfair, untrue or misleading advertising * * *"

Use of the phrase "shall mean and include" indicates that the statutory definition was not intended to be restrictive or exclusive. [Athens Lodge No. 70 v. Wilson, 117 Cal. App. 2d 322, 255 P. 2d 482 (1953).] It is left to the courts to determine what conduct will constitute unfair competition in a particular case. [Schwartz v. Slenderella Systems of California, 120 Adv. Cal. App. 30, 260 P. 2d 256 (1953); MacSweeney Enterprises, Inc., v. Tarantino, 106 Cal. App. 2d 504, 235 P. 2d 266 (1951).]

While this litigation has been pending the businesses of the parties on both sides in the sale of scratchers for use in oil well cementing operations has grown rapidly and has [666] spread to the oil producing sections of Mexico and Ecuador to the south and Canada to the north. Accompanying this growth, intensity of competition has increased and

with it the unfair methods employed by both sides to influence the trade. A dozen or more suits involving one phase or another of their controversies have been commenced in Texas, Louisiana, Canada, Mexico and Venezuela, by plaintiff Hall or one of the interveners or both, against B & W, Inc., and Wright or one of them and one of the customers of B & W, Inc. [Cf. Virtue v. Creamery Package Co., 227 U.S. 8 (1913); Crosley Corp. v. Hazeltine Corp., 122 F. 2d 925 (3d Cir. 1941), cert. denied, 315 U.S. 813 (1942).]

And defendants Wright and B & W, Inc., have not been idle. In addition to opposing Hall at every permissible stage and by every permissible proceeding in the United States Patent Office, they caused to be organized "Scratchers, Inc.," a Nevada corporation, and caused it to acquire legal title to the Black Patent No. 2,151,416 and to file three suits in Texas and Oklahoma against one of plaintiff-interveners or one of their customers alleging infringement of the Black patent.

Much of this litigation was commenced to serve as a basis for sales propaganda to the trade in the state or county where filed. Each side employed practiced techniques of their [667] own to influence the placing of business by the larger oil producing companies. Such techniques involved everything from veiled threat to adroit suggestion in an effort to cause the oil companies to feel more secure patent-infringement wise if they would direct their business to one side or the other.

In brief it appears that suits filed in this and other courts were tried primarily to the trade. [See: Gerosa v. Apco Mfg. Co., 299 Fed. 19, 26 (1st Cir. 1924); Panay Horizontal Show Jar Co. v. Aridor Co., 292 Fed. 858 (7th Cir. 1923); Luten v. Wilson Reinforced Concrete Co., 263 Fed. 983 (8th Cir. 1920).] While pretending to look to this court of equity for justice each side set about through myriad methods of self-help to make their own justice.

It is the age-old policy of courts of equity to require that he who sues seeking equity must not only come into court with "clean hands" as respects the controversy, but must continue to keep "clean hands" as to the controversy throughout the pendency of the litigation. Thus the "clean hands" doctrine tends to overlap the field of the maxim that "He who seeks equity must do equity."

The rule is well expressed by Judge Soper in Root Refining Co. v. Universal Oil Products Co.: "No principle [668] is better settled than the maxim that he who comes into equity must come with clean hands and keep them clean throughout the course of the litigation, and that if he violates this rule, he must be denied all relief whatever may have been the merits of his claim." [169 F. 2d 514, 534-535 (3d Cir.), cert. denied, 335 U.S. 912 (1948); see also: Precision Co. v. Automotive Co., 324 U.S. 806 (1945): Hazel-Atlas Co. v. Hartford Co., 322 U.S. 238 (1944); Morton Salt Co. v. Suppiger Co., supra, 314 U.S. at 492-494; Keystone Driller Co. v. General Excavator Co., 290 U.S. 240, 245 (1933); Mas v. Coca-Cola Co., 163 F. 2d 505, 508 (4th Cir. 1947);

American Ins. Co. v. Scheufler, 129 F. 2d 143, 148 (8th Cir.), cert. denied, 317 U.S. 687 (1942); Rollman Mfg. Co. v. Universal Hdw. Works, 238 Fed. 568, 570 (3d Cir. 1916).]

As Judge Stone explained in American Ins. Co. v. Lucas: "In applying the maxim requiring equity from one seeking equity the court is concerned primarily with the rights and duties of the parties inter sese. In applying the 'clean hands' maxim the court is concerned primarily with protecting its own integrity from improper action by a party. The former arises upon the pleading of a party (usually defendant) against whom a fraud has been committed. The latter need not be even pleaded; may come to the attention of the court in any way; and the court will act sua sponte * * *. Even when the matter [669] is brought to the attention of the court by a pleading, the court acts 'not out of any regard for the defendant who sets it up, but only on account of the public interest.' McMullen v. Hoffman, 174 U.S. 639, 669 * * *" [38 F. Supp. 896 934-935 (W.D.Mo. 1940); see also: Frank Adam Elec. Co. v. Westinghouse Elec. & Mfg. Co., 146 F. 2d 165 (8th Cir. 1945); Renaud Sales Co. v. Davis, 104 F. 2d 683, 685 (1st Cir. 1939); E. W. Bliss Co. v. Cold Metal Process Co., 102 F. 2d 105, 110 (6th Cir. 1939); Buromin Co. v. National Aluminate Corp., 70 F. Supp. 214 (D. Del. 1947); General Elec. Co. v. Hygrade Sylvania Corp., 45 F. Supp. 714, 718 (S.D.N.Y. 1942); cf. Heath v. Frankel, 153 F. 2d 369, 371 (9th Cir.), cert. denied, 328 U.S. 844 (1946).]

This doctrine alone then should prompt denial of equitable relief to both sides here. Moreover, the resort of both to self-help makes it clear that as far as any relief arising from unfair trade practices is concerned, the court should and will leave the parties as it finds them.

In the language of Wheeler v. Sage, 1 Wall (68 U.S.) 518 (1863): "The court was imposed on * * * A proceeding like this is against good conscience and good morals, and cannot receive the sanction of a court of equity. The principle is too plain to need a citation of authorities to confirm it. [670] It is against the policy of the law to help either party in such controversies." [1 Wall. (68 U.S.) at 530-531.]

For the reasons stated, both the fifth cause of action for unfair competition asserted by plaintiff and plaintiff-interveners, and the counter-claims asserted by defendants Wright and B & W, Inc., for unfair competition, will be dismissed for want of equity. [Cf. Precision Co. v. Automotive Co., supra, 324 U.S. 806; Morton Salt Co. v. Suppiger Co., supra, 314 U.S. at 494; Worden v. Calif. Fig Syrup Co., 187 U.S. 516, 540 (1903).]

As to the patents in issue the matter is not solely a controversy between the parties. The trade and the public at large have an interest calling for some adjudication as to validity. Under the circumstances at bar it is the duty of the court to decide that issue notwithstanding the conduct of the parties seeking the decree. [See: Sinclair Co. v. Interchemi-

cal Corp., 325 U.S. 327, 330 (1945); Patent Scaffolding Co. v. Up-Right, Inc., 194 F. 2d 457, (9th Cir.), cert. denied, 343 U.S. 958 (1952); Harries v. Air King Products Co., 183 F. 2d 158 (2d Cir. 1950); Pennington Eng. Co. v. Spicer Mfg. Co., 165 F. 2d 59 (6th Cir. 1947); Cover v. Schwartz, 133 F. 2d 541, 545 (2d Cir. 1942), cert. denied, 319 U.S. 748 (1943).]

As the Court observed in Precision Co. v. Automotive Co., supra: "Clearly these are matters concerning [671] far more than the interests of the adverse parties. The possession and assertion of patent rights are 'issues of great moment to the public.' * * * Mercoid Corp. v. Mid-Continent Investment Co., 320 U.S. 661, 665; * * * United States v. Masonite Corp., 316 U.S. 265, 278. A patent by its very nature is affected with a public interest. As recognized by the Constitution, it is a special privilege designed to serve the public purpose of promoting the 'Progress of Science and useful Arts.' At the same time, a patent is an exception to the general rule against monopolies and to the right to access to a free and open market. The far-reaching social and economic consequences of a patent, therefore, give the public a paramount interest in seeing that patent monopolies spring from backgrounds free from fraud or other inequitable conduct and that such monopolies are kept within their legitimate scope." [324 U.S. at 815-816.]

After full consideration of the claims of each of the patents in suit in the light of the prior art as

disclosed by the evidence, I find and hold the Hall Patent No. 2,671,515 ["Well Bore Cleaning Scratcher"] and the three Wright patents, namely, Patent No. 2,338,372 ["Method for Conditioning Well Bores"], and Patent No. 2,374,317 ["Well Production Equipment"—wall cleaning guide], and Patent No. 2,392,352 ["Method of Placing Cement Plugs in Well Bores"], and each claim of each thereof, to be invalid for want of "invention." [See: 35 U.S.C. [672] §§100, 101; Jungerson v. Ostby & Barton Co., 335 U.S. 560 (1949); Mandel Bros. v. Wallace, 335 U.S. 291 (1948); Sinclair Co. v. Interchemical Corp., supra, 325 U.S. 327; Dow Co. v. Halliburton Co., 324 U.S. 320 (1945); Cuno Corp. v. Automatic Devices Corp., 314 U.S. 84, 91, 94 (1941); Honolulu Oil Corp. v. Halliburton, 306 U.S. 550 (1939); Lincoln Co. v. Stewart-Warner Corp., 303 U.S. 545 (1938); cf. Graver Mfg. Co. v. Linde Co., 336 U.S. 271 (1949); Goodyear Co. v. Ray-O-Vac Co., 321 U.S. 275 (1944); Harries v. Air King Products Co., supra, 183 F. 2d at 162-163; and see Heath v. Frankel, supra, 153 F. 2d 369; Dehydrators Ltd. v. Petrolite Corp., supra, 117 F. 2d 183; Celite Corp. v. Dicalite Co., supra, 96 F. 2d 242.]

It is probably true, as counsel respectively contend, that other grounds of failure of the patents in suit to meet the statutory conditions of patentability may be established by the evidence, but due regard for the public interest does not require the court to consider them in view of the finding of want of invention. [See: 35 U.S.C. §§103, 112; Muncie Gear Works v. Outboard Co., 315 U.S. 759 (1942); Gen-

eral Elec. Co. v. Wabash Co., 304 U.S. 364 (1938); Beidler v. United States, 253 U.S. 447 (1920).]

The attorneys for defendants and counter-complainants may lodge with the Clerk pursuant to local rule 7 within fifteen [673] days proposed findings of fact, conclusions of law and judgment (1) in favor of plaintiff and plaintiff-interveners on the counter-claims for patent infringement, and dismissing for want of equity the counter-claim for unfair competition; and (2) in favor of defendants on the seventh cause of action for patent infringement, and dismissing for want of equity the fifth cause of action for unfair competition.

In order to preserve the status quo until the judgment shall become final, the injunction relating to communications to the trade, issued January 26, 1952, pursuant to stipulation, must remain in effect, and the parties be further enjoined from commencing any new action, and from prosecuting or taking further proceedings in any pending action, involving a claim or cause of action presented for adjudication in the case at bar. Both injunctions will continue in force pendente lite and, upon determination of this action by final judgment, shall become ipso facto dissolved. [See: Kerotest Mfg. Co. v. C-O Two Co., 342 U.S. 180, 183-186 (1952); Kessler v. Eldred, 206 U.S. 285, 289-290 (1907); cf. United States v. United Mine Workers, 330 U.S. 258, 289-294 (1947); Gompers v. Bucks Stove & Range Co., 221 U.S. 418 (1911); Ex Parte Simon, 208 U.S. 144, 148 (1908); United States v. Shipp, 203 U.S. 563, 573 (1906).]

[Endorsed]: Filed September 17, 1954. [674]

[Title of District Court and Cause.]

OBJECTIONS TO DEFENDANTS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND PROPOSED ALTERNATIVE AND ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to local Rule 7 (a) and stipulations of the parties, Plaintiff and Plaintiff-Interveners do object to certain of the Findings of Fact and Conclusions of Law proposed by Defendants for the reasons hereinafter given, and do also propose amended, alternative, and additional Findings of Fact and Conclusions of Law.

For the convenience of the Court, the amendments to the proposed findings are shown by striking out portions of the text and inserting new text in brackets.

The amendments to the Findings, or objections thereto, or additional findings as proposed herein, are suggested in order to make them more proper as to form or in better conformance with the Memorandum of Decision, and Plaintiff and Plaintiff-Intervenors reserve the right to except thereto.

Finding I.

The proposed amendment of Finding I is as follows:

Page 3, line 5, after the word "Nevada" insert the words now dissolved.

The reason for the amendment is that the evidence shows (see Exhibit 163) that the Nevada Leasehold Corporation was dissolved.

Finding III.

The proposed amendment of Finding III is as follows:

"Plaintiff, Jesse E. Hall, and plaintiff-interveners, Weatherford Oil Tool Company, Inc.; Weatherford Spring Company of Venezuela, C. A.; Hall Development Company, C. A.; Weatherford, Ltd.; Weatherford Internactional, S. A. de C. V.; Nevada Leasehold Corporation, and Parker Industrial Products, Inc., each ~~and all~~ claimed during the progress of this litigation [and prior to the Stipulation of November 9, 1953] some right, title ~~and~~ [or] interest [as is shown by Plaintiff's Exhibits 153A through 170] ~~in~~ [under] any Letters Patent of Jesse E. Hall, plaintiff, that might issue, ~~and in, to or under~~ [by virtue of] the instrument dated September 15, 1944, in evidence as Plaintiff's Exhibit 34, ~~for Well Scratchers or Methods of Well Completion or Well Cementing.~~"

The reason for the amendment is that, according to the evidence as shown by Plaintiff's Exhibits 153A through 170, the various Plaintiff-Interveners claimed different rights or titles or interests by virtue of the instrument of September 15, 1944. These interests were claimed prior to the stipulation of November 9, 1953, which cancelled the said instrument.

Finding IV.

The proposed amendment of such Finding is as follows:

"Plaintiff, Jesse E. Hall, and plaintiff-interveners, Weatherford Oil Tool Company, Inc.; Weatherford Spring Company of Venezuela, C. A.; Hall Development Company, C. A.; Weatherford, Ltd.; Weatherford Internactional, S. A. de C. V.; Nevada Leasehold Corporation, and Parker Industrial Products, Inc., throughout the period of this litigation [and prior to the stipulation of November 9, 1953], have claimed, [in the United States, an exclusive license in and to the invention covered by said Letters Patent No. 2,671,515] and since the date of issuance thereof on March 9, 1954, have [has] asserted ownership [been and is the owner] of all right, title, [and] interest and license under [in and to] Letters Patent No. 2,671,515 [,] granted March 9, 1954."

The reasons for the amendments are: the claim of exclusive license by Hall and the ownership of the patent by Hall is established by the contract of September 15, 1944, Plaintiff's Exhibit 34, and the Stipulation of November 9, 1953; and any claim under the patent rights of Hall made by Plaintiff-Intervenors is covered by the amendments to proposed Finding III.

Finding V.

The proposed amendment of such Finding V is as follows:

"Plaintiff and plaintiff-interveners invoked the jurisdiction of this Court upon the ground of diversity of citizenship [,] and [under the Declaratory Judgment Act and under the Patent Laws of the United States and] because of alleged violation of the Clayton Act."

The reason for the amendment is that the pleadings show that Plaintiff and Plaintiff-Interveners relied, as well, on the Patent Laws of the United States and the Declaratory Judgment Act.

Finding XI.

The proposed amendment of Finding XI is as follows:

"On March 16, 1954, during the argument of this cause, on motion of the defendants and by order of the Court, a supplemental complaint was [Since the claimed invention, covered by the Hall Patent No. 2,671,515, and the Patent Office proceedings upon the application from which said patent matured, had previously been the subject of extended testimony in the case, leave was granted Plaintiff Hall to file an amendment supplementing the Second Amended Complaint, charging the Defendants Wright and B and W, Inc., with infringement, and said Defendants] filed and an answer to the [amended and] supplemental complaint was filed by the defendant, the complaint alleging infringement of the said Hall Patent No. 2,671,515, and the answer of defendants-counterclaimants asserting in-

validity of the said Letters Patent and denying infringement thereof."

Findings XII. and XIII.

Plaintiffs and Plaintiff-Interveners object to these Findings and believe they should not be made. The reason for the objections are that, as to Finding XII, it is unnecessary in view of Finding XXI, and that, as to Finding XIII, it is unnecessary for the decision as stated in the Memorandum of Decision.

Finding XIV.

The proposed amendment of Finding XIV is as follows:

"Defendants, Wright and B & W, Inc., both before and during the pendency of this litigation, [have unfairly and without cause,] notified customers of plaintiff and plaintiff-interveners that the customers infringed a [the] Wright method Patent No. 2,338,372 by the use of scratchers in cementing operation incident to completion of oil wells, the notices given by defendants to the trade both directly and indirectly were without intent that the notices serve as a preliminary to suit."

The reason for the proposed amendment is that the Finding, so amended, more accurately conforms to the Memorandum of Decision (see pages 5 and 6).

Finding XVI.

The proposed amendment of Finding XVI is as follows:

"During the pendency of this litigation [, in addition to opposing issuance of the Hall Patent No. 2,671,515,] defendants Wright and B & W, Inc., caused to be organized Scratchers, Incorporated, a Nevada corporation, and caused that corporation to acquire legal title to the Black and Stroble Patent No. 2,151,416 and caused suits to be filed [against one of the plaintiff-interveners and against one of their customers, alleging infringement of the Black patent,] to wit:

> "Scratchers, Inc., v. Weatherford Oil Tool Co., Inc., et al., U.S.D.C., N.D. Texas, No. 2064.
>
> "Scratchers, Inc., v. S & R Tool & Supply Co., et al., U.S.D.C., S.D. Texas, C.A. No. 5827.
>
> "Scratchers, Inc., v. Weatherford Oil Tool Co., Inc., U.S.D.C., W.D. Oklahoma, C.A. No. 4942.

[and, in Mexico, brought proceedings for the purpose of invalidating Hall Mexican Patent No. 47,661.]"

The reason for the proposed amendment is that the Finding, so amended, more accurately conforms with the Memorandum of Decision, page 8, and, with regard to the inclusion of the Mexican proceeding, both the facts as stated in the Notice under local Rule 35 filed by both Plaintiffs and Defendants on November 17 and 18, 1953.

Finding XVII.

The proposed amendment of Finding XVII is as follows:

"[After grant of a motion of Plaintiff-Intervener in the Oklahoma City Case, C.A. No. 4942, to join Defendant B & W, Inc., as a third party defendant,] ~~It~~ [it] was stipulated between all of the parties that the said suits filed by Scratchers, Inc., as hereinabove set forth be, and the same were, all dismissed without prejudice, and before trial."

The reason for the proposed amendment is that, if there is the necessity for indicating termination of the Scratcher, Inc., litigation, the complete facts should be stated, as is shown by Plaintiff's Exhibit 143.

Finding XIX.

The proposed amendment of Finding XIX is as follows:

"The notices thus given to the trade were ~~not in good faith and were~~ without any intent that such notices serve as a preliminary to suit."

The reason for the proposed amendment is that the Finding, as amended, more accurately conforms with the Memorandum of Decision (see page 6).

Finding XXI.

The proposed amendment of Finding XXI is as follows:

"That plaintiff and plaintiff-interveners have

caused a multiplicity of suits to be filed involving one phase or another of their assertions against defendants and in that regard have instituted suits in Texas, Louisiana, Canada, Mexico and Venezuela, against B & W, Inc., or Wright, or one or more of the customers of B & W, Inc., to wit, as follows:

"U. S. District Court, Hutchinson, Kansas.

"Jesse E. Hall v. J. L. Robinson, d.b.a. Robinson Oil Fields Specialty Co. (Now pending.)

"U. S. District Court, S.D. Texas, Houston Div., Civil Action #5168.

"Weatherford Oil Tool Co., Inc., v. B & W, Inc., and Bruce Barkis. (Action dismissed, pursuant to stipulation, March 30, 1951.)

"U. S. District Court, S.D. Texas, Houston Div., Civil Action #6797.

"Weatherford Oil Tool Co., Inc., v. B & W, Inc., and Bruce Barkis. (Now pending.)

"(Canada)

"Exchequer Court of Canada, No. 61365.

"Weatherford Limited v. Import Tool Co. Limited. (Now pending.)

"Exchequer Court of Canada, No. 53422.

"Hall Development Company of Venezuela, C.A., v. B & W, Inc. (Plaintiff Hall substituted for Hall Development Co. Now pending.)

"Venezuela

"Court of the First Instance, Federal Court of Venezuela, City of Caracas, Venezuela.

"Hall v. Wright & B & W, Incorporated. Action for infringement of Venezuelan Patent No. 3722 by sale of defendants of scratchers in Venezuela. (Now Pending.)

"Court of the First Instance, Civil and Mercantile Matters, Anzoategui, Venezuela.

"Hall v. Vacuum Truck Service, C.A., in which action an ex parte injunction was obtained against the sale by Vacuum Truck Service, B & W's distributor, of scratchers in Venezuela, which injunction was dissolved by the First Appeal Court and the action of dissolving the injunction was affirmed by the Supreme Court of Venezuela.

"Mexico

"An action instituted in Mexico in the Federal Court by Hall against the Commissioner of Patents of Mexico and B & W, Inc., to set aside the decision of the Patent Office Commissioner of Mexico that the Hall Patent No. 47661 lacked novelty, in which action the decision of the Commissioner of Patents was affirmed by the Second District Court and in which action there is now pending an appeal to the Supreme Court of Mexico."

The reason for the amendment is that if the status of any of the suits is given, then it is proper that the status of all should be indicated. The Venezuelan infringement case in the Court of First Instance is duplicated, and has been placed in its proper order in the amended Finding.

Finding XXII.

This Finding is objected to, and Plaintiff and Plaintiff-Interveners believe that the Finding should not be made. The reason for the objection is that, insofar as it duplicates proposed Finding XXI, it is unnecessary; and, insofar as it is not a duplication, it is not necessary to the decision stated in the Memorandum of Decision.

Finding XXIII.

The proposed amendment of Finding XXIII is as follows:

"The suits [and proceedings] ~~instituted~~ were ~~instituted~~ [commenced to serve] as a basis for sales propaganda to the trade in the state or country ~~which they were~~ [where] filed."

The reason for the amendment is that the Finding, as amended, conforms more accurately to the Memorandum of Decision (see page 8).

Finding XXV.

The proposed amendment of Finding XXV is as follows:

"The suits [and proceedings] in this and in the other countries were tried primarily to the trade while pretending to look to this Court of equity for justice."

The reason for the proposed amendment is that the Finding omits reference to the proceedings brought by Defendants in the United States and in Foreign Patent Offices, and, as amended, conforms more accurately with the Memorandum of Decision, (see page 8) and with Findings XVI and XXI as amended.

Finding XXVI.

Finding XXVI is objected to, and Plaintiff and Plaintiff-Interveners believe that it should not be made as a Finding of Fact. The reason for the objection is that such alleged Finding is a Conclusion of Law.

Finding XXVIII.

Plaintiff and Plaintiff-Interveners object to Finding XXVIII, and believe that it should not be made, since it finds no support in the Memorandum of Decision and is unnecessary in view of Finding XXVII.

Findings XXIX, XXX, and XXXI.

Plaintiff and Plaintiff-Interveners object to Findings XXIX, XXX, and XXXI, and believe that they should not be made. The reason for the objection is that each of the Findings is a Conclusion of Law.

Findings XXXII, XXXIII, XXXIV, and XXXV.

The proposed amendment to Findings XXXII, XXXIII, XXXIV, and XXXV is as follows:

"[The subject matter of] Letters Patent No. 2,671,515 granted to Jesse E. Hall March 9, 1954, ~~and all claims thereof, is invalid as lacking~~ [as claimed therein, lacks] invention over the state of the prior art."

"[The subject matter of] Letters Patent No. 2,338,372 to Kenneth A. Wright, and assigned to B & W, Inc., granted January 4, 1944, ~~and all claims thereof, is invalid as lacking~~ [as claimed therein, lacks] invention over the state of the prior art."

"[The subject matter of] Letters Patent No. 2,374,317 to Kenneth A. Wright, and assigned to B & W, Inc., granted April 24, 1945, ~~and all claims thereof, is invalid as lacking~~ [as claimed therein, lacks] invention over the state of the prior art."

"[The subject matter of] Letters Patent No. 2,392,352 to Kenneth A. Wright, and assigned to B & W, Inc., granted January 8, 1946, ~~and all claims thereof, is invalid as lacking~~ [as claimed therein, lacks] invention over the state of the prior art."

The reason for the amendment to Findings XXXII, XXXIII, XXXIV, and XXXV is that, in their proposed form, they are either Conclusions of Law or mixed Conclusions of Fact and Law; and the amendments are believed to place each of them

in better form as Findings of Fact and in better conformance with the Memorandum of Decision.

Proposed Additional Findings

Finding Va to follow Finding V.

Va.

The matter in controversy exceeds the sum or value of $3,000.00, exclusive of interest and cost, and is between citizens of different states, or between citizens of the United States and corporations of foreign countries.

See U.S.C. Title 28, Section 1332.

Finding Xa to follow Finding X.

Xa.

During the pendency of the Hall application, Ser. No. 55,619, in evidence as Exhibit 69, and which application matured into Hall Patent No. 2,671,515 (Exhibit 286), Defendants Wright and B & W, Inc., opposed the grant of said patent to Hall at every permissible stage and by every permissible proceeding in the United States Patent Office.

This Finding is supported by the Memorandum of Decision page 8.

Finding XVa to follow Finding XV.

XVa.

That the threats and notices of infringement of said Patent No. 2,338,372 were given by Defendants

to customers of Plaintiff and Plaintiff-Interveners in order to make them feel more secure, patent infringement-wise, if they purchased scratchers from Defendants.

The basis for the Finding is found in the Memorandum of Decision, pages 5, 8, and 9.

Finding XVb to follow Finding XVa.

XVb.

That the threats and notices of infringement of said method patent No. 2,338,372 were given by Defendants to customers of Plaintiff and Plaintiff-Interveners in order to establish a limited monopoly in the manufacture and sale of scratchers not covered by said Letters Patent No. 2,338,372.

Finding XVc to follow Finding XVb.

XVc.

Defendants, Wright and B & W, Inc., both before and during the pendency of this litigation, have, unfairly and without cause, notified customers of Plaintiff and Plaintiff-Interveners that the customers infringed the Wright Patent No. 2,374,317 by the use of scratchers in cementing operations of oil wells; and the notices given by defendants to the trade, both directly and indirectly, were without intent that the notices serve as a preliminary to suit.

The basis for the Finding is found in the first full sentence of page 9 of the Memorandum of Decision and in the evidence in this case, see, for ex-

ample, Exhibits 16, 17, 19, and 44, and Record, Volume 3, pages 525 to 550, inclusive.

Finding XVd to follow Finding XVc.

XVd.

That the threats and notices of infringement of said Patent No. 2,374,317 were given by Defendants to customers of Plaintiff and Plaintiff-Interveners in order to make them feel more secure, patent infringement-wise, if they purchased scratchers from Defendants.

The basis for the Finding is found in the Memorandum of Decision, page 9, and in the evidence, see, for example, Exhibits 16, 17, 19, and 44, and Record, Volume 3, pages 525 to 550, inclusive.

Finding XVe to follow Finding XVd.

XVe.

That the threats and notices of infringement of said Patent No. 2,374,317 were given by Defendants to customers of Plaintiff and Plaintiff-Interveners in order to establish a limited monopoly in the manufacture and sale of scratchers not covered by said Letters Patent No. 2,374,317.

The basis for the Finding is found in the Memorandum of Decision, page 9, and in the evidence, see, for example, Exhibits 16, 17, 19, and 44, and Record, Volume 3, pages 525 to 550, inclusive.

Finding XXVa to follow Finding XXV.

XXVa.

The Defendants, prior to and during this litigation, have each, by myriad methods, including those set forth in Findings of Fact XIV, XV, XVI, XIX, XXIII, XXIV and XXV, resorted to self-help while pretending to look to this court for justice.

This Finding is based upon the Memorandum of Decision, pages 8 and 9.

Objections to the Defendant's Proposed Conclusions of Law

The conclusions proposed by Defendants objected to by Plaintiff and Plaintiff-Interveners and proposed additional conclusions.

Conclusion D

Plaintiff and Plaintiff-Interveners object to Conclusion D and believe that it should not be made.

The reason for the objection is that Conclusion D is contrary to the Memorandum of Decision, pages 11 and 15. The decision denies all relief to the parties and leaves them "as it finds them."

Conclusion E

Plaintiff and Plaintiff-Interveners object to Conclusion E and believe that it should not be made.

The reason for the objection is the same as that given under Conclusion D and also, because the al-

leged conclusion is not conclusion of law but an injunction.

Proposed Additional Conclusions of Law

Conclusion A1 to precede Conclusion A.

Conclusion A1—This court had original jurisdiction of this action under U.S.C. Title 28, Sections 1332, 2201, 2202, and Title 15, Sections 1 to 3, inclusive, and Sections 15 and 26, and under the Patent Laws of the United States.

The above Conclusion A1 is supported by Findings I, II, III and Va and the Memorandum of Decision, pages 2, 3 and 4.

Conclusion A2 to follow Conclusion A1.

Conclusion A2—Defendants and each of them have unfairly competed with Plaintiff prior to and with Plaintiff and Plaintiff-Interveners during the pendency of this lawsuit because of each of the facts found in Findings XIV, XV, XVI, XIX, XXIII, XXIV, and XXV.

The basis for this conclusion of law is found in the amended Findings XIV, XV, XVI, XIX, XXIII, XXIV, XXV, and in the Memorandum of Decision, Pages 5, 8, and 9.

Conclusion B1 to follow Conclusion B.

Conclusion B1—The threats and notices to customers of Plaintiff and Plaintiff-Interveners given by Defendants, asserting Letters Patent No. 2,338,372

before and during the pendency of this litigation were not in good faith and without intent to sue for infringement of said patent and constituted a misuse of the patent.

Conclusion B2 to follow Conclusion B1.

Conclusion B2—The threats and notices to customers of Plaintiff and Plaintiff-Interveners, given by Defendants, asserting Letters Patent No. 2,388,372, and No. 2,374,317 before and during the pendency of this litigation were a misuse of the patents since the method covered by the patent No. 2,338,372 does not teach or claim or mention any method of carrying on a cementing operation incident to the completion of an oil well and patent No. 2,374,317 does not cover the scratcher sold by Plaintiff or Plaintiff-Interveners.

Conclusion B3 to follow B2.

Conclusion B3—That the notices and threats of infringement to customers of Plaintiff and Plaintiff-Interveners given by Defendants, asserting Letters Patent No. 2,338,372 and No. 2,374,317 before and during pendency of this litigation were a misuse of the patent in that they were attempts to establish and thereby Defendants did establish a limited monopoly in the manufacture and sale of scratchers not covered by said Letters Patent. The basis for the Conclusions B1, B2, and B3 are the same as stated under Conclusion A1.

Conclusion D1 to follow Conclusion C.

Conclusion D1—The Court in order to leave the parties as it finds them should vacate the preliminary injunction issued herein on January 26, 1952.

The basis for this Conclusion is the same as that stated in connection with objections to Conclusion D, above.

Respectfully Submitted,

/s/ THOMAS E. SCOFIELD,

/s/ PHILIP SUBKOW,

Attorneys for Plaintiff and Plaintiff-Interveners.

Receipt of Copy acknowledged.

[Endorsed]: Filed October 25, 1954.

[Title of District Court and Cause.]

OBJECTION TO FORM OF JUDGMENT PROPOSED BY DEFENDANTS

Plaintiff and Plaintiff-Interveners object to the form of Judgment proposed by Defendants as follows and on the following grounds:

1. All of the matter included from Page 1, line 30, beginning with "This" to and through the word "Follows" on line 29 of page 2 should be stricken and the following inserted in its place:

"The above-entitled action came on for trial before the Court without a jury and was partially tried beginning March 30, 1949, adjourned to Sep-

tember 30, 1952, and again partially tried and continued to November 3, 1953, and trial completed, the Plaintiffs, Plaintiff-Interveners and Defendants appearing by their respective attorneys and testimony having been offered and arguments heard and the Court having filed a Memorandum of Decision, Findings of Fact and Conclusions of Law, It is Declared Adjudged, Ordered and Decreed as follows'':

The basis for the objection and proposed alternative language is found in F.R.C.P. Rule 54a.

The following provisions should be included in the Judgment:

1. That no contract was entered into on September 15, 1944, between Jesse E. Hall, plaintiff, and B & W, Inc., a California corporation, defendant, or Kenneth A. Wright, defendant, and that the instrument Exhibit A to the Second Amended Complaint filed herein on the 2nd day of January, 1953, (Plaintiff's Ex. 34 in evidence) never constituted an existing contract and that said instrument is declared void and subject to be and is hereby cancelled as of the time of execution of said instrument on September 15, 1944, pursuant to Section 3412 of the Civil Code of California.

2. That neither plaintiff nor plaintiff-interveners, nor any of them, now have, and at no time had, any right, title, interest or license based upon or in any manner arising out of or under the purported agreement of September 15, 1944, Exhibit A to the Second Amended Complaint (Pltfs. Ex. 34 in evidence) or in or to United States Letters Patent No.

2,338,372, granted January 4, 1944, to Kenneth A. Wright, or in or to United States Letters Patent No. 2,374,317, granted April 24, 1945, to Kenneth A. Wright, or in or to United States Letters Patent No. 2,392,352, granted January 8, 1946, to Kenneth A. Wright, or in or to any other Letters Patent, domestic or foreign, granted to Kenneth A. Wright, and to B & W, Inc., or to either of them.

3. That defendants, nor any of them, do not now have, and at no time had, any right, title, interest, or license based upon or in any manner arising out of or under the purported agreement of September 15, 1944, Exhibit A to the Second Amended Complaint (Pltfs. Ex. 34 in evidence) or in or to the applications of Jesse E. Hall, Serial No. 388,891, filed in the United States Patent Office on April 16, 1941, or in or to Serial No. 528,183, filed in the United States Patent Office on March 27, 1944, or in or to Serial No. 627,013, filed in the United States Patent Office on November 6, 1945, or in or to Serial No. 55,619, filed in the United States Patent Office on October 20, 1948, or in or to United States Letters Patent No. 2,671,515 or any Letters Patent of the United States issued upon any of said applications or in or to any other applications for Patents domestic or foreign, filed by or for plaintiff and plaintiff-interveners or any one or more of them, or in or to any other Letters Patent, domestic or foreign, granted to plaintiff and plaintiff-interveners or any one or more of them.

The basis for these provisions Nos. 1, 2, and 3 are found in the Stipulation of November 6, 1953.

The following amendments should be made in the proposed Judgment:

Page 2 change "1" line 30 to "4" and strike "Declaratory," second occurrence line 31.

Change the numbers of paragraphs 2 through 11 on pages 2, 3, and 4 to 4 through 14, respectively.

Lines 7 and 8 of page 3 strike from "and" line 7 through "held" line 9 and insert "is the owner of."

The basis for this change is found in Amended Finding IV.

Strike Paragraphs 12 and 13 and insert as follows:

15. The preliminary injunction issued January 26, 1952, is hereby vacated.

16. None of the parties shall recover from the other any taxable costs or attorney's fees.

The basis for these objections for the proposed provisions 15 and 16 is found in the Memorandum of Decision, pages 11 and 15, wherein the Court has decided to leave the parties "as it finds them."

Respectfully Submitted,

/s/ THOMAS E. SCOFIELD,

/s/ PHILIP SUBKOW,

Attorneys for Plaintiff and Plaintiff-Interveners.

Receipt of Copy acknowledged.

[Endorsed]: Filed October 25, 1954.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to Rule 52 of the Rules of Civil Procedure, this cause having come on for trial before this Court commencing May 25, 1949, then being recessed upon June 10, 1949, [675] and the trial being resumed September 30, 1952, and having been again recessed on October 7, 1952, and the trial being resumed on November 3, 1953, and being recessed on December 10, 1953, and resumed on January 19, 1954, and the presentation of evidence having been completed on March 17, 1954; before William C. Mathes, District Judge, and plaintiff and plaintiff-interveners and defendants, counter-claimants having orally argued this cause before the Court on March 16, 17, 18 and 19, 1954, and the Court having filed on September 17, 1954, its Memorandum of Decision, and having directed the attorneys for defendants and counter-claimants to prepare Findings of Fact and Conclusions of Law pursuant to said Memorandum of Decision, the same are hereby approved by the Court, as follows:

I.

Plaintiff, Jesse E. Hall, Senior, set forth as Jesse E. Hall, plaintiff in this action, is a citizen of the United States and a resident of the State of Texas; Weatherford Oil Tool Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Texas, and having a regular

and established place of business in the City of Houston, State of Texas; Weatherford Spring Company of Venezuela, C. A., is a corporation organized and existing under and by virtue of the laws of the Republic of Venezuela and has a regular and established place of business at Maracaibo, Venezuela; Hall Development Company, C.A., is a corporation organized and existing under and virtue of the laws of the Republic of Venezuela and has a regular and established place of business at Maracaibo, Venezuela; Weatherford, Ltd., is a corporation organized and existing under and by virtue of the laws of the Dominion of Canada, Province of Alberta, and has a regular and established place of business at Edmonton, Alberta, Canada; Weatherford [676] Internacional, S.A. de C.V. is a corporation organized and existing under and by virtue of the laws of the United States of Mexico and has a regular and established place of business at Tampico, Mexico; Nevada Leasehold Corporation is a corporation organized and existing under and by virtue of the laws of the State of Nevada and had a regular and established place of business at Las Vegas, Nevada, but is now dissolved; Parker Industrial Products, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Texas and has a regular and established place of business in Parker County, Texas.

II.

Defendant, Kenneth A. Wright, is a citizen of the United States and resident of Los Angeles, California: Roland E. Smith is a citizen of the United

States and resident of Los Angeles, California; B and W, Inc., is a corporation organized and existing under and by virtue of the laws of the State of California and has a regular and established place of business in Los Angeles County, State of California; Adams-Campbell Co., Ltd., is a corporation organized and existing under and by virtue of the laws of the State of California and having a regular and established place of business in Los Angeles, State of California; California Spring Co., Inc., is a corporation organized and existing under and by virtue of the laws of the State of California and having a regular and established place of business at Los Angeles, State of California.

III.

Plaintiff, Jesse E. Hall, and plaintiff-interveners Weatherford Oil Tool Company, Inc.; Weatherford Spring [677] Company of Venezuela, C.A., Hall Development Company, C. A.; Weatherford, Ltd.; Weatherford Internacional, S. A. de C. V.; Nevada Leasehold Corporation, and Parker Industrial Products, Inc., each claimed during the progress of this litigation, prior to the stipulation of November 9, 1953, hereinafter mentioned, some right, title or interest, as is shown by Exhibits 153-A through 170, under any Letters Patent of Jesse E. Hall, plaintiff, that might issue and in, to or under the instrument dated September 15, 1944, and in evidence as Plaintiff's Exhibit 34.

IV.

Plaintiff Jesse E. Hall throughout the period of this litigation and prior to the stipulation of No-

vember 9, 1953, claimed in the United States an exclusive license in and to the invention covered by United States Letters Patent No. 2,671,515, and since the date of issuance thereof on March 9, 1954, has been and is the owner of all right, title and interest in and to said Letters Patent No. 2,671,515.

V.

Plaintiff and plaintiff-interveners invoked the jurisdiction of this Court (1) upon the ground of diversity of citizenship, (2) under the patent laws of the United States, and (3) because of an alleged violation of the Clayton Act.

Va.

The matter in controversy exceeds the sum or value of $3,000.00, exclusive of interest and cost, and is between citizens of different states, or between citizens of the United States and corporations of foreign countries. [678]

VI.

Before the close of the taking of evidence on behalf of plaintiff's allegations and before any evidence was offered on behalf of defendant or counterclaimants, and on November 9, 1953, it was stipulated, and the stipulation was approved by the Court and entered and filed herein declaring that the instrument dated September 15, 1944, Exhibit 34, never constituted a contract between the parties Hall and Wright, or Hall and B and W, Inc., or either of them, and dismissed with prejudice all causes of

action based upon or growing out of the said instrument of September 15, 1944, and dismissing all causes of action asserted against defendant, Roland E. Smith, a sales representative of B and W, Inc., and Adams-Campbell Co., Ltd., and California Spring Co., Inc., suppliers of scratchers for B and W, Inc., and dismissing all causes of action asserted against Wright and B and W, Inc., by virtue of the Second Complaint, Reformation, Declaratory Relief, Breach of Contract, Antitrust and Unfair Competition other than that cause of action asserted against B and W, Inc., and Kenneth A. Wright for alleged unfair competition and dismissing with prejudice the cause of action asserted against B & W, Inc., and Kenneth A. Wright for alleged antitrust violation and dismissing with prejudice the counter-claims asserted by defendants, Kenneth A. Wright and B & W, Inc., against plaintiff and plaintiff-interveners for damages for alleged violation of the antitrust laws and for declaratory relief, leaving before this Court on November 9, 1953, only the claims of plaintiff and plaintiff-interveners against defendants Wright and B & W, Inc., for alleged unfair competition and the counter-claims of the defendants counter-claimants B & W, Inc., and Wright for alleged unfair [679] competition and for infringement of the Letters Patent Nos. 2,338,372 issued January 4, 1944, to defendant Wright and assigned to defendant B & W, Inc.; 2,374,317, issued April 24, 1945, to defendant Wright and assigned to defendant B & W, Inc.; 2,392,352 issued January 8,

1946, to defendant Wright and assigned to defendant B & W, Inc.

VII.

Defendant B & W, Inc., is the owner of all right, title and interest in, to and under Letters Patent No. 2,338,372, defendants' Exhibit 37.

VIII.

Defendant B & W, Inc., is the owner of all right, title and interest in, to and under Letters Patent No. 2,374,317, defendants' Exhibit 38.

IX.

Defendant B & W, Inc., is the owner of all right, title and interest in, to and under Letters Patent No. 2,392,352, defendants' Exhibit 39.

X.

Prior to submission of this cause to the Court for its decision there was issued to Jesse E. Hall, plaintiff, by the United States Patent Office Letters Patent No. 2,671,515 (Exhibit 286), on March 9, 1954, which was a patent granted to Jesse E. Hall upon the application for Letters Patent Serial No. 55,619, in evidence as plaintiff's Exhibit 69.

Xa.

During the pendency of the Hall [680] application, Ser. No. 55,619, in evidence as Exhibit 69, and which application matured on March 9, 1954, into Hall Patent No. 2,671,515 (Exhibit 286), defendants and counter-claimants Wright and B & W, Inc., opposed the grant of said patent to Hall at every per-

missible stage and by every permissible proceeding in the United States Patent Office.

XI.

On March 16, 1954, during the argument of this cause, on motion of the defendants and by order of the Court, a supplemental complaint was filed by plaintiff Hall and an answer to the supplemental complaint was filed by defendants Wright and B & W, Inc., the complaint alleging infringement of the said Hall Patent No. 2,671,515, and the answer of defendants-counterclaimants asserting invalidity of the said Letters Patent and denying infringement thereof.

XII.

That there was brought to the Court's attention and immediately after the issue of the said Letters Patent No. 2,671,515, suit was filed upon said Letters Patent in the United States District Court, in Hutchinson, Kansas, against J. L. Robinson, and/or J. L. Robinson doing business under the fictitious name and style of Robinson Oil Fields Specialty Company of 616 Main Street, Great Bend, Kansas, the distributor and agent of defendant B & W, Inc., for said area, said action being based upon the sale and distribution by said J. L. Robinson and J. L. Robinson d/b/a Robinson Oil Felds Specialty Company of scratchers manufactured by B & W, Inc., and which scratchers are in evidence in this cause of action and are known as the Nu-Coil scratcher as shown in the photographs, Exhibits 60, 61 and 62, and a physical replica of [681] which is in evidence

as plaintiff's Exhibit 72, and the Multiflex scratcher, plaintiff's Exhibit 57.

XIII.

On the disclosure of the institution of the suit in Kansas against the distributor and agent of B & W, Inc., and upon the permitting of the pleadings in this cause of action to be amended and supplemented to bring into the action the infringement and validity of the Hall Letters Patent No. 2,671,515, it was agreed by plaintiff and plaintiff-interveners and its counsel that they would immediately instruct that no service of the process be made in the Kansas case and that all action in the said Kansas case would be suspended pending entry of final judgment in this cause of action.

XIV.

Defendants Wright and B & W, Inc., both before and during the pendency of this litigation, have unfairly and without cause notified customers of plaintiff and plaintiff-interveners that the customers infringed the Wright method Patent No. 2,338,372 by the use of scratchers in cementing operation incident to completion of oil wells, the notices given by defendants to the trade both directly and indirectly were without intent that the notices serve as a preliminary to suit.

XV.

The notices thus given to the trade were not given in good faith because Letters Patent No. 2,-

338,372 does not teach, claim, or even mention a method of carrying out the cementing operations incident to the completion of an oil well. [682]

XVa.

That the threats and notices of infringement of said method patent No. 2,338,372 were given by defendants and counter-claimants to customers of plaintiff and plaintiff-interveners in order to establish a limited monopoly in the manufacture and sale of scratchers not covered by said Letters Patent No. 2,338,372.

XVb.

Defendants and counter-claimants Wright and B & W, Inc., both before and during the pendency of this litigation, have unfairly and without cause, notified customers of plaintiff and plaintiff-interveners that the customers infringed the Wright Patent No. 2,374,317 by the use of scratchers in cementing operations of oil wells; and the notices given by defendants to the trade, both directly and indirectly, were without intent that the notices serve as a preliminary to suit.

XVc.

That the threats and notices of infringement of said Patent No. 2,374,317 were given by defendants and counter-claimants to customers of plaintiff and plaintiff-interveners in order to establish a limited monopoly in the manufacture and sale of scratchers not covered by said Letters Patent No. 2,374,317.

XVI.

During the pendency of this litigation, in addition

to opposing the issuance of Hall Patent No. 2,671,-515, defendants and counter-claimants Wright and B & W, Inc., caused to be organized Scratchers, Incorporated, a Nevada [683] corporation, and caused that corporation to acquire legal title to the Black and Stroble Patent No. 2,151,416 and caused suits to be filed, to wit:

Scratchers, Inc., v. Weatherford Oil Tool Co., Inc., et al., U.S.D.C. N.D. Texas, No. 2064.

Scratchers, Inc., v. S & R Tool & Supply Co., et al., U.S.D.C. S.D. Texas, C.A. No. 5827.

Scratchers, Inc., v. Weatherford Oil Tool Co., Inc., U.S.D.C. W.D. Oklahoma, C.A. No. 4942; and also brought proceedings in Mexico attacking the Hall Mexican Patent No. 47,661.

XVII.

It was stipulated between all the parties that the said suits filed by Scratchers, Inc., as hereinabove set forth be, and the same were, all dismissed without prejudice, and before trial, as shown by plaintiff's Exhibit 143.

XVIII.

During the pendency of this suit plaintiff, plaintiff-interveners have notified the trade and the customers of the defendants "without probable cause, that they were entitled to an accounting from the trade for all Multiflex and Nu-Coil scratchers which the trade purchased from B & W, Inc.; and that they were entitled to a royalty of $2.50 per scratcher from the trade for each Multiflex and Nu-

Coil scratcher purchased by the trade."

XIX.

The notices thus given to the trade were given unfairly and without cause and without any intent that such notices serve as a preliminary to suit. [684]

XX.

The notices thus given to the trade by plaintiff and plaintiff-interveners were given not in good faith, as a royalty of $2.50 per $8.00 scratcher would not be within the bounds of economic reason.

XXI.

That plaintiff and plaintiff-interveners have caused a multiplicity of suits to be filed involving one phase or another of their assertions against defendants and in that regard have instituted suits in Texas, Louisiana, Canada, Mexico, and Venezuela, against B & W, Inc., or Wright, or one or more of the customers of B & W, Inc., to wit, as follows:

U. S. District Court, Hutchinson, Kansas.

Jesse E. Hall v. J. L. Robinson d/b/a Robinson Oil Fields Specialty Co. Now pending.

U. S. District Court, S. D., Texas, Houston Div., Civil Action No. 5168.

Weatherford Oil Tool Co., Inc., v. B & W, Inc., and Bruce Barkis.

U. S. District Court, S. D., Texas, Houston Div., Civil Action No. 6797 (now pending).

Weatherford Oil Tool Co., Inc., v. B & W, Inc., and Bruce Barkis.

Canada

Exchequer Court of Canada, No. 61365 (now pending).

Weatherford Limited v. Import Tool Co. Limited.

Exchequer Court of Canada, No. 53422 (now pending).

Plaintiff Hall substituted for Hall Development Company of Venezuela, C. A., v. B & W, Inc.

Court of the First Instance Federal Court of Venezuela, City of Caracas, Venezuela.

Hall v. Wright and B & W, [685] Incorporated.

Court of the First Instance Civil and Mercantile Matters Anzoategui, Venezuela.

Hall v. Vacuum Truck Serivce, C.A.—in which action an ex parte injunction was obtained against the sale by Vacuum Truck Service, B & W's distributor, of scratchers in Venezuela, which injunction was dissolved by the First Appeal Court and the action dissolving the injunction was affirmed by the Supreme Court of Venezuela.

Venezuela

Hall v. Wright and B & W, Incorporated.

Action for infringement of Venezuelan Patent No.

3722 by sale by defendants of scratchers in Venezuela. Now pending.

Mexico

An action instituted in Mexico in the Federal Court by Hall against the Commissioner of Patents of Mexico and B & W, Inc., to set aside the decision of the Patent Office Commissioner of Mexico, that the Hall Mexican Patent No. 47661 lacked novelty, in which action the decision of the Commissioner of Patents was affirmed by the Second District Court and in which action there is now pending an appeal to the Supreme Court of Mexico.

XXII.

It was stipulated that the case filed in Houston, Texas, Civil Action No. 5168, be, and the same was, dismissed March 30, 1951, without prejudice, but after the dismissal of that action the second suit was instituted in Houston, Texas, Civil Action No. 6797, now pending. [686]

XXIII.

The suits and proceedings referred to in XVI, XXI and XXII above were instituted to serve as a basis for sales propaganda to the trade in the state or country in which they were filed.

XXIV.

Plaintiff and plaintiff-interveners and defendants and counter-claimants herein have all employed and practiced techniques of their own to influence the placing of business by the larger oil producing

companies, which techniques involved everything from veiled threats to adroit suggestions in an effort to make the oil companies feel more secure, patent-infringement-wide, if they would direct their business to one side or the other.

XXV.

The suits and proceedings in this and in the other countries were tried primarily to the trade while pretending to look to this Court of equity for justice.

XXVa.

Plaintiff and plaintiff-interveners and defendants and counterclaimants, prior to and during this litigation, have each, by myriad methods, including those set forth in these Findings of Fact, resorted to self-help while pretending to look to this court for justice.

XXVI.

The plaintiff, plaintiff-interveners and defendants and counter-claimants all come into this Court of Equity with unclean hands. [687]

XXVII.

During the pendency of this action, the business of the parties on each side of this litigation in the sale of scratchers for use in oil well cementing operations has grown rapidly and has spread to the oil-producing sections of Mexico, and Venezuela to the South, and Canada to the North.

XXVIII.

The operations of selling scratchers has been a

commercially successful venture and the business has grown rapidly from the inception thereof.

XXIX.

As to the patents in suit, the issues between the parties is not solely a controversy between such parties. The trade and business at large have an interest calling for adjudication as to the validity and it is the duty of the Court to decide this issue notwithstanding the conduct of the parties seeking the decree.

XXX.

A patent is an exception to the general rule against monopolies and to the right of access to a free and open market.

XXXI.

The far-reaching social and economic consequences of a patent therefore give the public a paramount interest in seeing that the patent monopolies spring from backgrounds free from fraud or other inequitable conduct and that such monopolies are kept within their legitimate scope. [688]

XXXII.

Letters Patent No. 2,671,515 granted to Jesse E. Hall, March 9, 1954, and all claims thereof, is invalid as lacking invention over the state of the prior art.

XXXIII.

Letters Patent No. 2,338,372 to Kenneth A. Wright, and assigned to B & W, Inc., granted Janu-

ary 4, 1944, and all claims thereof, is invalid as lacking invention over the state of the prior art.

XXXIV

Letters Patent No. 2,374,317 to Kenneth A. Wright, and assigned to B & W, Inc., granted April 24, 1945, and all claims thereof, is invalid as lacking invention over the state of the prior art.

XXXV.

Letters Patent No. 2,392,352 to Kenneth A. Wright, and assigned to B & W, Inc., granted January 8, 1946, and all claims thereof, is invalid as lacking invention over the state of the prior [689] art.

Conclusions of Law

A

This Court has original jurisdiction of this action under U.S.C. Title 28, § 1332 and Title 15, §§ 1 to 3, inclusive, and §§ 15 and 26, and under the Patent Laws of the United States.

B

Plaintiff, plaintiff-interveners and defendants and counter-claimants come into this Court with unclean hands and did not, during the continuance of this controversy, maintain their hands clean, so that all relief is denied plaintiff, plaintiff-interveners, defendants and counter-claimants upon the merits of their respective claims.

C

Plaintiff, plaintiff-interveners and defendants and counter-claimants, during the pendency of this

action have resorted to self-help so that as far as any relief arising from unfair trade practices is concerned, this Court will leave the parties as it finds them.

D

As this action involves the public interest, the Court will and does determine the question of validity of the Letters Patent before it, to wit:

No. 2,671,515 issued to Jesse E. Hall, March 9, 1954, is invalid as to each and every claim thereof as lacking invention in the light of the prior art.

No. 2,338,372 issued to Kenneth A. Wright and assigned to B & W, Inc., granted January 4, 1944, is invalid [690] as to each and every claim thereof as lacking invention in the light of the prior art.

No. 2,374,317, issued to Kenneth A. Wright and assigned to B & W, Inc., granted April 24, 1945, is invalid as to each and every claim thereof as lacking invention in the light of the prior art.

No. 2,392,352, issued to Kenneth A. Wright and assigned to B & W, Inc., granted January 8, 1946, is invalid as to each and every claim thereof as lacking invention in the light of the prior art.

E

That the respective parties to this action should pay and bear their own costs.

F

That in order to preserve the status quo until the judgment of this Court to be entered herein shall

became final, the injunction issued on January 26, 1952, pursuant to agreement of the parties should be continued in effect, and the parties should be further enjoined from commencing any new action and from prosecuting or taking further proceedings in any pending action involving any claim or cause of action presented to this Court for adjudication in the case at bar; and both such injunctions pendente lite should continue in force until the determination of this action by final judgment herein, and thereupon become ipso facto dissolved.

Dated this 15th day of November, 1954.

/s/ WM. C. MATHES,
Judge.

Service of Copy acknowledged.

Lodged October 11, 1954.

[Endorsed]: Filed November 15, 1954. [691]

United States District Court for the Southern District of California, Central Division

Civil No. 7839-WM

JESSE E. HALL,

Plaintiff,

and

WEATHERFORD OIL TOOL COMPANY, INC., a Texas Corporation; WEATHERFORD SPRING COMPANY OF VENEZUELA, C. A., a Venezuelan Corporation; HALL DEVELOPMENT COMPANY, C. A., a Venezuelan Corporation; WEATHERFORD, LTD., a Corporation of the Province of Alberta, Canada; WEATHERFORD INTERNACIONAL, S. A. de C. V., a Corporation of Mexico; NEVADA LEASEHOLD CORPORATION, a Nevada Corporation; PARKER INDUSTRIAL PRODUCTS, INC., a Texas Corporation,

Plaintiff-Interveners,

vs.

KENNETH A. WRIGHT, ROLAND E. SMITH, B & W, INC., a California Corporation; ADAMS-CAMPBELL CO., LTD., a California Corporation; and CALIFORNIA SPRING CO., INC., a California Corporation,

Defendants.

JUDGMENT (PROPOSED)

This Cause having come on to be heard upon plaintiff, plaintiff-intervener's "Second Amended Com-

plaint; Reformation; Declaratory Relief; Breach of Contract; Anti-trust; Unfair Competition" and "Plaintiffs' Amendment to the Second Amended Complaint and Supplemental Complaint" and the defendants' answers thereto and "Counterclaims of Defendants, Kenneth A. Wright and B & W, Inc.," and trial of this action having been recessed from time to time, and upon resumption of the trial a stipulation having been entered into and approved and filed herein November 9, 1953, which stipulation was for a judgment herein declaring that the instrument dated September 15, 1944, Exhibit 34 herein, never constituted a contract between the parties Hall and Wright, or Hall and B & W, Inc., or any of them, and dismissing with prejudice

(a) all causes of action asserted against defendants Roland E. Smith, Adams-Campbell Co., Ltd., and California Spring Co., Inc.;

(b) all causes of action asserted against Wright and B & W, Inc., by virtue of the "Second Amended Complaint; Reformation; Declaratory Relief; Breach of Contract; Anti-trust; Unfair Competition" other than that cause of action asserted against B & W, Inc., and Kenneth A. Wright for unfair competition;

(c) dismissing with prejudice the counterclaims asserted by defendants, Wright and B & W, Inc., against plaintiff, plaintiff-interveners for damages for alleged violation of the anti-trust laws and for declaratory relief;

and the trial having been concluded and the matter having been briefed and argued before the court by and on behalf of the respective parties hereto and the court having made and entered its findings of fact and conclusions of law pursuant to Rule 52 of the Rules of Civil Procedure, it is Hereby Adjudged and Decreed as follows:

1. That the "Second Amended Complaint; Reformation; Declaratory Relief; Declaratory Breach of Contract; Anti-trust; Unfair Competition" of plaintiff and plaintiff-interveners be and the same is hereby dismissed.

2. That the "Amendment to Second Amended Complaint and Supplemental Complaint" be and the same is hereby dismissed.

3. That the "Counterclaims of the Defendants, Kenneth A. Wright and B & W, Inc." be and the same are hereby dismissed.

4. That plaintiff and plaintiff-interveners are the owners of all right, title and interest and license and throughout the pendency of this cause of action have held all right, title and interest in and to Letters Patent No. 2,671,515, issued to Jesse E. Hall on March 9, 1954, for Well Bore Cleaning Scratcher, and all right to recover for infringement thereof.

5. That Letters Patent No. 2,671,515 granted March 9, 1954, to Jesse E. Hall, plaintiff herein, is and at all times has been invalid and void as to each and every claim thereof.

6. That defendant-counterclaimant, B & W, Inc., is the owner of the entire right, title and interest in

and to United States Letters Patent No. 2,338,372, granted January 4, 1944, for Method for Conditioning Well Bores, and all right to recover for infringement thereof.

7. That Letters Patent No. 2,338,372, granted January 4, 1944, for Method for Conditioning Well Bores, is and at all times has been invalid and void as to each and every claim thereof.

8. That defendant-counterclaimant, B & W, Inc., is the owner of the entire right, title and interest in and to United States Letters Patent No. 2,374,317, granted April 24, 1945, for Well Production Equipment, and all right to recover for infringement thereof.

9. That Letters Patent No. 2,374,317, granted April 24, 1945, for Well Production Equipment, is and at all times has been invalid and void as to each and every claim thereof.

10. That defendant-counterclaimant, B & W, Inc., is the owner of the entire right, title and interest in and to United States Letters Patent No. 2,392,352, granted January 8, 1946, for Method of Placing Cement Plugs in Well Bores, and all right to recover for infringement thereof.

11. That Letters Patent No. 2,392,352, granted January 8, 1946, for Method of Placing Cement Plugs in Well Bores, is and at all times has been invalid and void as to each and every claim thereof.

12. That plaintiff, plaintiff-interveners, and defendants-counterclaimants, pending the entry of final judgment herein, be enjoined both individually,

separately and collectively, and through their agents, attorneys and those acting in privy with them, from carrying forward the prosecution of any pending actions or the instituting of any new actions for relief based upon any of the claims or under any of the Letters Patent herein adjudicated and from asserting to the trade or to any person a stranger to this litigation any claim which is herein adjudicated with respect to assertions of unfair competition, contract right, or growing out of any Letters Patent herein adjudicated.

13. That defendants recover from plaintiff, plaintiff-interveners the taxable costs of defendants in this cause and that defendants have judgment and execution against said plaintiff, plaintiff-interveners for said costs.

Dated: This .... day of October, 1954.

....,
United States District Judge.

Approved as to Form:

....,

....,
Attorneys for Plaintiff,
Plaintiff-Interveners.

LYON & LYON,

/s/ LEWIS E. LYON,
Attorneys for Defendants-
Counterclaimants.

Lodged October 11, 1954.

[Endorsed]: Filed December 27, 1954.

United States District Court for the Southern District of California, Central Division

Civil No. 7839-WM

JESSE E. HALL,

Plaintiff,

and

WEATHERFORD OIL TOOL COMPANY, INC., a Texas Corporation; WEATHERFORD SPRING COMPANY OF VENEZUELA, C. A., a Venezuelan Corporation; HALL DEVELOPMENT COMPANY, C. A., a Venezuelan Corporation; WEATHERFORD, LTD., a Corporation of the Province of Alberta, Canada; WEATHERFORD INTERNACIONAL, S.A. de C.V., a Corporation of Mexico; NEVADA LEASEHOLD CORPORATION, a Nevada Corporation; PARKER INDUSTRIAL PRODUCTS, INC., a Texas Corporation,

Plaintiff-Interveners,

vs.

KENNETH A. WRIGHT, B & W, INC., a California Corporation,

Defendants and Counter-claimants.

JUDGMENT

The Court having filed Findings of Fact and Conclusions of Law herein pursuant to Rule 52 of the Federal Rules of Civil Procedure, it is Hereby

Ordered, Declared, Adjudged and Decreed as follows:

1. That by stipulation of the parties dated [694] November 9, 1953, no contract was entered into on September 15, 1944, between Jesse E. Hall, plaintiff, and B & W, Inc., a California corporation, defendant, or Kenneth A. Wright, defendant; that the instrument Exhibit A to the Second Amended Complaint, filed herein on the 2nd day of January, 1953, (Plaintiff's Ex. 34 in evidence) never constituted an existing contract; and said instrument is declared void and is hereby cancelled as of the time of execution of said instrument on September 15, 1944, pursuant to § 3412 of the Civil Code of California.

2. That neither plaintiff nor plaintiff-interveners, nor any of them, now have, and at no time had, any right, title, interest or license based upon or in any manner arising out of or under the purported agreement of September 15, 1944, Exhibit A to the Second Amended Complaint (Plaintiff's Ex. 34 in evidence); or in or to United States Letters Patent No. 2,338,372, granted January 4, 1944, to Kenneth A. Wright; or in or to United States Letters Patent No. 2,374,317, granted April 24, 1945, to Kenneth A. Wright; or in or to United States Letters Patent No. 2,392,352, granted January 8, 1946, to Kenneth A. Wright; or in or to any other Letters Patent, domestic or foreign, granted to Kenneth A. Wright, and to B & W, Inc., or to either of them.

3. That defendants, and each of them, do not now have, and at no time had, any right, title, interest, or

license based upon or in any manner arising out of or under the purported agreement of [695] September 15, 1944, Exhibit A to the Second Amended Complaint (Plaintiff's Ex. 34 in evidence); or in or to the applications of Jesse E. Hall, Serial No. 388,891, filed in the United States Patent Office on April 16, 1941; or in or to Serial No. 528,183, filed in the United States Patent Office on March 27, 1944; or in or to Serial No. 627,013, filed in the United States Patent Office on November 6, 1945; or in or to Serial No. 55,619, filed in the United States Patent Office on October 20, 1948; or in or to United States Letters Patent No. 2,671,515; or any Letters Patent of the United States issued upon any of said applications; or in or to any other applications for Patents domestic or foreign, filed by or for plaintiff and plaintiff-interveners or any one or more of them; or in or to any other Letters Patent, domestic or foreign, granted to plaintiff and plaintiff-interveners or any one or more of them.

4. That the "Second Amended Complaint; Reformation; Declaratory Relief; Breach of Contract; Anti-trust; Unfair Competition" of plaintiff and plaintiff-interveners be and the same is hereby dismissed.

5. That the "Amendment to Second Amended Complaint and Supplemental Complaint" be and the same is hereby dismissed.

6. That the "Counterclaims of the Defendants,

Kenneth A. Wright and B & W, Inc." be and the same are hereby dismissed.

7. That plaintiff is the owner of all right, [696] title and interest in and to Letters Patent No. 2,671,515, issued to Jesse E. Hall on March 9, 1954, for Well Bore Cleaning Scratcher, and all right to recover for infringement thereof.

8. That Letters Patent No. 2,671,515 granted March 9, 1954, to Jesse E. Hall, plaintiff herein, is and at all times has been invalid and void as to each and every claim thereof.

9. That defendant-counter-claimant, B & W, Inc., is the owner of the entire right, title and interest in and to United States Letters Patent No. 2,338,372, granted January 4, 1944, for Method for Conditioning Well Bores, and all right to recover for infringement thereof.

10. That Letters Patent No. 2,338,372, granted January 4, 1944, for Method for Conditioning Well Bores, is and at all times has been invalid and void as to each and every claim thereof.

11. That defendant-counter-claimant, B & W, Inc., is the owner of the entire right, title and interest in and to United States Letters Patent No. 2,374,317, granted April 24, 1945, for Well Production Equipment, and all right to recover for infringement thereof.

12. That Letters Patent No. 2,374,317, granted April 24, 1945, for Well Production Equipment, is

and at all times has been invalid and void as to each and every claim thereof.

13. That defendant-counter-claimant, B & W, Inc., is the owner of the entire right, title and interest in and to United States Letters Patent No. 2,392,352, granted January 8, 1946, for Method [697] of Placing Cement Plugs in Well Bores, and all right to recover for infringement thereof.

14. That Letters Patent No. 2,392,352, granted January 8, 1946, for Method of Placing Cement Plugs in Well Bores, is and at all times has been invalid and void as to each and every claim thereof.

15. That the preliminary injunction issued January 26, 1952, shall continue in force pendente lite, and shall become ipso facto dissolved when this judgment becomes final.

16. That the plaintiff and plaintiff-interveners and defendants and counter-claimants above named, and their officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with them who receive actual notice hereof by personal service or otherwise, are hereby further enjoined and restrained from commencing any new action and from prosecuting or taking further proceedings in any pending action involving any claim or cause of action presented to this Court for adjudication in this case; and this injunction shall continue in force pendente lite and shall become ipso facto dissolved when this judgment becomes final.

17. That the respective parties to this action shall pay and bear their own costs.

November 15, 1954.

/s/ WM. C. MATHES,
United States District Judge.

Docketed and entered November 15, 1954.

[Endorsed]: Filed November 15, 1954. [698]

[Title of District Court and Cause.]

NOTICE OF ENTRY

Re: Hall vs. Weatherford Oil Tool Co., Inc., et al., No. 7839-WM.

You are hereby notified that judgment has been docketed and entered this day in ..... the above-entitled case.

Dated: Los Angeles, California, November 15, 1954.

By /s/ C. A. SIMMONS,
Clerk,

By C. A. SIMMONS,
Deputy Clerk. [693]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO COURT OF APPEALS UNDER RULE 73 (B)

Notice is hereby given that Jesse E. Hall, plaintiff, and plaintiff-interveners above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit from those [699] parts of the judgment of November 15, 1954, set forth below:

1. That part of Paragraph 4 dismissing Plaintiff and Plaintiff-Interveners, Cause of Action for Unfair Competition in the Second Amended Complaint.

2. Paragraph 5, dismissing the Amendment to the Second Amended Complaint, by which defendants were charged with infringement of the Hall Patent No. 2,671,515.

3. Paragraph 8, holding Letters Patent to Hall, No. 2,671,515, invalid and void as to each and every claim thereof.

4. From that part of Paragraph 15 which continues in force, pendente lite until the aforesaid judgment becomes final, the injunction issued January 26, 1952, and also from said injunction.

5. That part of Paragraph 16 enjoining and restraining Plaintiff and Plaintiff-Interveners, and their officers, agents, servants, employees, and attorneys, and all persons in active concert or participating with them, all as set forth in said Paragraph 16, from commencing any new action and

from prosecuting or taking further proceedings in any pending action involving any claim or cause of action presented before the District Court for adjudication, and also from that part of Paragraph 16 which continues the said injunction in force pendente lite until the judgment becomes final.

6. That part of Paragraph 17 ordering, adjudging and decreeing that Plaintiff and Plaintiff-Interveners pay and bear their own costs.

/s/ THOMAS E. SCOFIELD, by P.S.

/s/ PHILIP SUBKOW,
Attorneys for Appellant and Appellant-Interveners.

Affidavit of Mail attached.

[Endorsed]: Filed December 13, 1954. [700]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Clerk of the Above-Entitled Court and to the Plaintiff, Jesse E. Hall, and Plaintiff-Interveners, and to Thomas E. Scofield, Esq., and Philip Subkow, Esq., Their Attorneys:

Notice is hereby given that Kenneth A. Wright and [701] B & W, Inc., defendants and counterclaimants above named, hereby appeal to the Court of Appeals for the Ninth Circuit from that portion

of the Judgment entered herein November 15, 1954, which denies relief to defendants and defendants-counter-claimants, and denies relief to defendants-counterclaimants on the counter-claim.

Dated: December 14, 1954.

KENNETH A. WRIGHT,

B & W, INC.,
Appellants.

By /s/ LEWIS E. LYON,
Their Attorney.

Affidavit of Service by Mail attached.

[Endorsed]: Filed December 14, 1954. [702]

[Title of District Court and Cause.]

STATEMENT OF POINTS RELIED UPON BY PLAINTIFF AND PLAINTIFF-INTERVENERS, APPELLANTS, ON APPEAL

1. The District Court erred in refusing to cancel the Hall-Wright agreement of September 15, 1944, (Ptfs'. Ex. 34) in March and April, 1951, when both plaintiff and defendants requested cancellation by motions for summary judgment. [703]

2. The refusal by the District Court to cancel the Hall-Wright agreement of September 15, 1944, (Ptfs'. Exh. 34) in 1951 permitted defendants to continue their nefarious acts of unfair competition.

3. The District Court erred in refusing to cancel the Hall-Wright agreement of September 15, 1944 (Ptfs'. Exh. 34), on October 1, 1952, when both plaintiff and defendants pleaded that the agreement be cancelled.

4. The District Court erred in refusing to give plaintiff Hall relief from defendants' unfair tactics although requested and petitioned throughout the litigation.

5. The interferences, protests, and public use and other proceedings instituted and prosecuted by defendants in the United States Patent Office were designed to and did delay the issue of the Hall United States Patent No. 2,671,515 and were instituted and prosecuted maliciously and without probable cause and for the purpose of interfering with the business and legal rights of Plaintiff and Plaintiff-Interveners, and to obtain a competitive advantage, were unprivileged and constituted malicious prosecution, a malicious abuse of process, and unfair competition.

6. All actions and proceedings instituted and prosecuted by Plaintiff and Plaintiff-Interveners in this country and in foreign countries were instituted and prosecuted in conformance with and under the laws and rules of the judisdictions thereto pertaining, were instituted and prosecuted in good faith and with probable cause and in order to enforce their legal rights under the laws and rules legally in force in each such jurisdiction, and did not constitute unfair competition or unclean hands or any misuse of

any patents or other patent rights of the Plaintiff and Plaintiff-Interveners in each such jurisdiction, and were and are privileged.

7. Plaintiff's notifications to the trade dated January 12, [704] 1952, referred to in the injunction issued January 26, 1952, and (continued in force pendente lite by the final judgment in this case) were made in good faith with probable cause, relying on the rights which the Agreement of September 15, 1944, (Pltf's. Exh. 34) purported to give him and did not constitute unfair competition or unclean hands but were instead privileged.

8. The notification of January 12, 1952, designated by the District Court as an example of self-help was solely the act of the Plaintiff Hall; was not joined in, approved, adopted, or ratified by any of Plaintiff-Interveners and cannot be ascribed or charged to Plaintiff-Interveners.

9. The said letter of January 12, 1952, did not threaten suit and said notices were given in good faith, were fair and legitimate offers of license under patent rights which Plaintiff Hall then in good faith believed he possessed.

10. The demand for said royalty and the specification of the amount thereof were made in good faith and were within the legal rights of Plaintiff and were within his privilege and did not constitute unfair competition or unclean hands.

11. The District Court erred in not finding justification for the letter of January 12, 1952, in the Hall-Wright agreement of September 15, 1944 (Pltfs'. Exh. 34 in evidence).

12. The sales techniques employed and practiced by Plaintiff and Plaintiff-Interveners in an effort to obtain the custom of users and vendors of scratchers were fair and legitimate methods of competition and were privileged.

13. The suits and proceedings in this and other countries were brought and prosecuted for the enforcement of and defense of the legal and equitable rights of Plaintiff and Plaintiff-Interveners and for the purpose of obtaining justice for themselves and not primarily or in any other manner for the purpose of injuring defendants or anyone else and were privileged. [705]

14. The following action and proceeding prosecuted by this Plaintiff and Plaintiff-Interveners does not involve any claim or cause of action made by Plaintiff and Plaintiff-Interveners against defendants and presented for adjudication by the pleadings in force when this cause was submitted for judgment:

> Hall and Hall Dev. Co., S. A., of Venezuela and B & W, No. 53422 in the Exchequer Court of Canada.

The following action is an action independent of the present action and against a defendant who is not subject to the jurisdiction of the District Court:

> Jesse E. Hall v. J. L. Robinson, d/b/a, Robinson Oil Fields Specialty Co. in the United States District Court, Hutchinson, Kansas.

15. Hall's acts of "self-help" cited under the Court's "clean hands" doctrine were acts of desperation resorted to only after the Court repeatedly refused Hall relief, and as employed by Plaintiff and Plaintiff-Interveners were fair and reasonable and within their legal rights and were privileged.

16. Plaintiff and Plaintiff-Interveners on bringing or coming into this action and at all times had and have each throughout this action maintained clean hands and conducted themselves in a manner that was equitable to all party litigants involved.

17. The Court erred in dismissing the Cause of Action for Unfair Competition in the Second Amended Complaint.

18. The Court erred in not granting Plaintiff and Plaintiff-Interveners the relief prayed for and other full and complete relief in connection with the cause of action for Unfair Competition in the Second Amended Complaint.

19. The Court erred in view of its Findings of Fact in not granting Plaintiff and Plaintiff-Interveners the relief prayed for and other full and complete relief in connection with the Cause of Action for Unfair Competition in the Second Amended Complaint. [706]

20. The Hall Patent No. 2,671,515 was drawn into the litigation within one week of its date of issue, and there is no evidence of threats and the Court did not find that there were any threats made by Plaintiff or Plaintiff-Interveners, of suit for infringement of said patent or any threats of any

other suit directed against anyone, other than the said action Hall v. Robinson, and this action, or any misuse of the patent as is charged under the Court's clean hands doctrine or otherwise by either Plaintiff Hall or Plaintiff-Interveners.

21. The District Court erred in striking down Hall Patent No. 2,671,515, because the Plaintiff Hall resorted to "self-help."

22. The Hall Patent No. 2,671,515 and every claim thereof is good and valid in law and infringed by defendants.

23. The Court erred in invalidating the said Hall patent as lacking invention over the state of the prior art.

24. The District Court erred in invalidating the Hall Patent No. 2,671,515 for want of invention in the light of the prior art, in view of the fact that it had been previously subjected to a most thorough examination for novelty and closest possible scrutiny for patentability by thirteen years prosecution in the United States Patent Office, besides being passed upon by appellate Patent Office tribunals and surviving interference and public use proceedings.

25. Invalidating the Hall Patent No. 2,671,515 solely for lack of invention over the prior art has no counterpart nor is authority for such holding found in Precision Instrument Co. v. Automotive Co., 324 U. S. 806.

26. The District Court erred in invalidating the Hall Patent No. 2,671,515 for lack of invention in

the light of its commercial success and wholesale adoption of the structure both by the trade and by defendants.

27. The Preliminary Injunction insofar as it is directed [707] against Plaintiff or Plaintiff-Interveners, issued January 26, 1952, and the Order contained in Paragraph 15 of the District Court judgment of November 15, 1954, continuing the same pendente lite until the judgment becomes final are each invalid and should be suspended and the said injunction and order vacated for each of the following reasons: they are invalid separately because

(a) They were each issued without requiring security from defendants;

(b) They were issued without any statement in said injunction of January 26, 1952, or said Order in said judgment of November 15, 1954, of the reasons for issuing said injunction or said Order;

(c) They were each issued without any accompanying Findings of Fact in support of said injunction or said Order; and

(d) There is no showing in this record and no Finding that defendants would be irreparably injured by anything done or threatened to be done by Plaintiff or Plaintiff-Interveners or any of them which would disturb the status quo or which otherwise requires the preliminary injunction.

28. The injunction pendente lite contained in Paragraph 16 of the Judgment of November 15, 1954, is invalid and should be suspended and vacated

for each of the following reasons; it is invalid separately because

(a) It was issued without prior notice or hearing;

(b) It was issued without requiring defendants to give security;

(c) It does not contain any statement of reasons for issuing the injunction;

(d) There are no Findings of Fact in support of said injunction; and

(e) There is no showing in the record nor any Findings of Fact that defendants would be irreparably injured by anything done or threatened to be done by Plaintiff or Plaintiff-Interveners or any of them which would disturb the status quo or which otherwise requires the preliminary injunction.

29. The equities between Plaintiff and Plaintiff-Interveners [708] on the one hand and defendants on the other are so balanced that it is inequitable to continue in force either the injunction of January 26, 1952, or the injunction stated in Paragraph 16 of the Judgment of November 15, 1954, and Plaintiff and Plaintiff-Interveners will be irreparably injured unless said injunctions are suspended and vacated.

/s/ THOMAS E. SCOFIELD, by P.S.

/s/ PHILIP SUBKOW,

Attorneys for Appellant and Appellant-Interveners.

Receipt of Copy acknowledged.

[Endorsed]: Filed December 15, 1954. [709]

In the District Court of the United States in and for the Southern District of California, Central Division

No. 7839-WM-Civil

JESSE E. HALL,

Plaintiff,

vs.

KENNETH A. WRIGHT and B & W, INC., a Corporation,

Defendants.

Honorable William C. Mathes, Judge, Presiding.

REPORTER'S TRANSCRIPT
OF PROCEEDINGS

Wednesday, May 25, 1949

Appearances:

For the Plaintiff:

PHILIP SUBKOW, ESQ., and
THOMAS E. SCOFIELD, ESQ.

For the Defendants:

LYON & LYON, by
REGINALD E. CAUGHEY, ESQ., and
CHARLES G. LYON, ESQ.

* * *

Mr. Scofield: If it please the court, this is a bill for declaratory relief, requesting reformation of a settlement agreement which was made at about the termination of two Patent Office interferences.

These interferences involved applications of the plaintiff Hall and an application and a patent of the defendant Wright. The settlement agreement was made in September, on September 15, 1944, and, as a result of that agreement, the parties settled their differences in the interferences, the interferences were dissolved in the Patent Office and the parties went their way, that is, they were competitors and they were furnishing the industry or the trade with products of a very similar nature.

For your information it might be well at the outset to [3*] give you just a little idea of what the controversy was about, as it will repeatedly arise here in this case.

The inventions involved in the interference were two: One was an apparatus; the other, a method. The apparatus consists of what is known in the trade by Mr. Wright as "a guide," by ourselves and by Mr. Hall, as "a scratcher"; and in that connection I might show you one of plaintiff's devices.

It consists of a collar of steel and attached to that collar inside are a plurality of springs or wire bristles. There is a row of studs that goes around the middle of the inside of this collar and these wire bristles are attached to that row of studs, each one having a coil spring at the location of the hole through which the bristles pass.

The purpose of this scratcher is to abrade the inside of the well bore of a well in order, according to the Wright patent, to clean the sides of the well bore and facilitate the production of oil.

***Page numbering appearing at top of page of original Reporter's Transcript of Record.**

The Court: You mean that is placed on the drill stem?

Mr. Scofield: It is placed on the casing.

The Court: Or the shoe of the casing?

Mr. Scofield: On the casing itself, on the outside of the casing itself. These scratchers are placed at intervals and then the casing is reciprocated in the well by raising and lowering, and these wire bristles abrade the well bore, the [4] wall of the well, and clean off the mud cake which has formed during the drilling operation.

The Court: Yes. Those are only placed, of course, where the sand would be, I take it, or where the producing zone would be?

Mr. Scofield: That is according to the Wright patent; that is, Mr. Wright advocated putting these scratchers in the producing zone at intervals on the casing and then reciprocating the pipe in order to take off this mud cake and facilitate the production of oil.

The Court: Would that be near perforations in the casing?

Mr. Scofield: Yes. At least, he puts them on the liner and the liner may be perforated permanently or perforated afterwards, but the function of these is to clean the well bore and facilitate production.

Another purpose which, since the issuance of the Wright patent, has developed in the industry is to put these scratchers at intervals along the entire length of the casing or throughout that portion of the casing where you want to obtain a cement column.

As you probably know, the practice is in production, in all well production at the time, after the well is drilled and before the casing is placed or when the casing is placed, cement is introduced into the well and is located or placed in the annular space surrounding the casing and between the [5] well bore and the casing. That cement is pumped down through the casing by pumps and it rises outside the casing, collects and accumulates in this annulus surrounding the casing and forms a bond with the casing and with the well bore, thus sealing off the different formations so that water cannot migrate or gas cannot migrate from one formation to another and get into the production zone.

Now, that is the function of these devices.

The Court: How would the scratcher aid in cementing off the well?

Mr. Scofield: The function of the scratcher in cementing the well is to again remove this mud cake which collects literally in sort of a coating on the well bore.

The Court: Its function, then, in any case is merely to scratch off the accumulated mud cake or drilling mud?

Mr. Scofield: That is correct in either case; it scratches off this mud cake and permits the cement to take a bond with the formation. That, in brief, is the function of the scratchers.

There is some difference in the apparatus of the plaintiff and defendants which I won't go into at the present time.

The Court: The mud cake will not adhere to the cement?

Mr. Scofield: The mud cake forms a layer or a coating over the formation and it prevents a bond between the cement and the formation. [6]

The Court: Which would be like joining adobe and cement, probably?

Mr. Scofield: That is correct. That is correct; that is, by removing this mud cake you permit the cement to grow right onto the formation itself and you get a seal or bond at that point. If the mud cake is there, then you do not get that bond or a satisfactory bond and you get this migration from one formation to the other back of the cement if you have the mud cake present.

The Court: If the mud cake is a rough surface, would the cement adhere to it?

Mr. Scofield: It would, but the difficulty with that is that if it adheres to the mud cake, if the mud cake breaks off, why, the cement comes off with it; so what you are interested in is to get a bond directly with the formation, between it and the cement, and remove this mud cake so far as you are able to do so. In producing this cement column you do much the same thing as Wright did in improving his production to the formation, the production area or the area from which production is taken; that is, you scratch the wall and reciprocate the casing in the same fashion as you reciprocated the liner or the perforated casing in the case of the method of the Wright patent. [7]

* * *

Mr. Caughey: As far as the patents are concerned, I think it is clear by various decisions that if the court should find that the defendant has used his patents so as to compel persons to purchase materials which are not covered by the patent, that they can deny relief. That has been done. [60]

* * *

WILLIAM H. MAXWELL

called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

Direct Examination

By Mr. Scofield: [77]

* * *

Q. Do you recall the time of day when this agreement was negotiated, that is, was it in the morning or in the afternoon?

A. As I recall it, the negotiations started in the early afternoon at about 2:00, maybe 2:30, something like that.

Q. Do you remember the day of the week?

A. No.

Q. Do you remember the circumstances that you were anxious to get away?

A. Do you mean that particular day?

Q. Yes.

A. No; I was not anxious to get away that particular day necessarily. I recall that at that time I was about to leave for Washington, within a matter of a few days or a matter of a week or so, and was

(Testimony of William H. Maxwell.)

pressed for time but that had nothing to do with this matter.

Q. In the last "Whereas" clause before the "consideration" clause there is a statement to the effect that "Hall has examined evidence in the possession of Wright and, in view thereof, concedes that Wright is the first inventor." What was that evidence?

Mr. Caughey: May your Honor please, I object to interrogating him relative to this particular question for the reason that the California Code specifically provides that where there is a statement in a written contract as an admission [82] of fact and the party is involved in litigation relative to the same, that there is a conclusive presumption as to the facts.

The Court: Is that not correct, Mr. Scofield?

Mr. Scofield: That, I believe, is correct, but I——

The Court: How can you go behind it?

Mr. Scofield: Well, what I want is this: There is no indication——

The Court: You do not attack the fact that there was evidence; you merely want to show the surrounding circumstances?

Mr. Scofield: I should like to know, yes, what the surrounding circumstances were.

The Court: Very well, objection overruled. You may answer.

Q. (By Mr. Scofield): And what evidence?

(Testimony of William H. Maxwell.)

Mr. Caughey: Well, now, I object to what evidence it was.

The Court: That would be one of the surrounding circumstances.

Mr. Scofield: I should think so.

The Court: In other words, there is no attempt here to dispute the fact that there was evidence?

Mr. Scofield: Not at all.

The Court: It is a question of what it was?

Mr. Scofield: That is right. [83]

Mr. Caughey: With that understanding.

The Court: It will not be received to refute the truth.

Mr. Scofield: Not at all, no; I am not questioning that evidence was shown.

A. I think, to answer that, I will have to say that, as the conference started, it was Mr. Hall's idea that the thing should be discussed quite apart from the merits or rights as between the parties. They were just going to make a settlement out of thin air; and that led to a discussion of the rights of the parties and as to who might prevail or as to who had the best chance to prevail. And it is my recollection that Mr. Wright had in his possession certain publications which disclosed the device which was the subject of one of the Hall applications, and it was dated early enough so that on its face it would invalidate the Hall application. And that particular publication or one or two, I think—I think there was more than one—they were shown to Mr. Hall, and from that point on the negotiations

(Testimony of William H. Maxwell.)

proceeded, the situation being from that point on that Mr. Hall had little or no standing in the matter and that his applications were apparently anticipated.

Q. What was that publication or publications? What was the publication or what were the publications that were shown Mr. Hall?

A. As I remember them, they were trade journals.

Q. And what were the names of those trade journals and the dates of publication? [84]

A. That I could not be sure. I think they were the conventional or standard oil field trade journals; and the dates, I do not recall. They were far enough back to be more than a year before the filing dates of the Hall applications.

Q. And you do not remember what they were?

A. Specifically, no. I would be guessing, purely. They were oil and gas journals or some such thing as that. [85]

* * *

Q. And I would like to have you direct your attention solely to the provision of paragraph No. 3; and I will ask you whether or not, from inspection of those two paragraphs, it recalls to your mind any discussion that was had in this group with regard to that provision?

A. I don't have any independent recollection of an independent discussion of this particular provision No. 3. The only thing that I can say that it does recall to my mind, and [93] that is that Mr.

(Testimony of William H. Maxwell.)

Hall had in mind at that time, or at least he expressed himself to this effect, that the device he then had and which was shown in his application that was in interference was what he was interested in, and he was not interested in anything else, and if he could get a license on that, that is all he [94] wanted.

* * *

Q. (By Mr. Scofield): This paragraph provides that Hall was to be given an exclusive license in a certain structure. Do you recall whether or not there was any discussion with respect to whether Hall should be permitted to continue to make the device that he was then manufacturing?

A. You are referring now to paragraph in the agreement?

Q. Paragraph 3. A. As finally drafted?

Q. Paragraph 3 as finally drafted.

A. It is my recollection that Mr. Hall was concerned with one thing, and that was to be able to make the device he was then making, and that was the thing shown in the application; and, as I recall it, it was the intention of the parties that he should be allowed to make that and that only.

Q. How do you know that the device that he was then making was the device shown in his application?

A. I would have no way to know that, except that that was the representation made by Mr. Hall, as I recall it. I have never seen a device made by

(Testimony of William H. Maxwell.)

Mr. Hall, except possibly the thing that was put in evidence here a few minutes ago.

Q. You personally do not know whether or not the device that he was making when the contract was executed or when the contract was negotiated was actually the device of the application? [97]

A. No. I just remember that he represented that to be the fact.

Q. And you recall that he represented that to this group when the contract was being negotiated?

A. That is my recollection.

Mr. Caughey: That is objected to as not clear. "He represented that"—what does he mean by "represented that"?

Mr. Scofield: The device of the application.

Mr. Caughey: That is satisfactory. [98]

* * *

Q. Now with regard to paragraph 7 by which Wright, at his discretion, could file the inventions in foreign countries; what do you recall about the preparation of that provision? [111]

A. As I recall it, that was one of the last things discussed, and there was some discussion between the parties as to whether or not they were too late to file in most countries. I think they more or less agreed that that was the case and they agreed on a nominal amount being spent for that purpose.

Q. Do you recall whether they discussed what inventions these were to be filed in foreign countries?

(Testimony of William H. Maxwell.)

A. As I remember it, that was to be entirely at Mr. Wright's discretion.

Q. Well, I think that the provision is that it shall be discretionary merely with Wright as to whether he protect the inventions. My question was as to what inventions Wright was to protect in the event he decided to protect the inventions in foreign countries; was that discussed?

A. I don't remember any specific discussion of that kind.

Q. Was there any discussion with regard to paragraph 2 as to the protection of these inventions of Hall in foreign countries?

A. Well, I have just said I don't remember any specific discussion of that other than what I have told you.

Q. No. Your previous answer was with regard to 7. They were the inventions that Wright was to protect. Now, under paragraph 2 Hall assigned the U. S. and foreign rights in his [112] two applications to Wright. Was there any discussion concerning the protection of the Hall inventions in foreign countries?

A. My first answer applied to the whole subject matter. I don't remember any distinction being made between them. There might have been, but I don't recall it. [113]

* * *

MARCIA DAVENPORT

called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Marcia Davenport.

Direct Examination

By Mr. Scofield: [177]

* * *

Q. In this paragraph 3 which appears on page 3, you see there is a portion of that paragraph stricken out? A. Yes.

Q. Evidently you had prepared the paragraph before and composed the paragraph before this part was stricken from it? A. That is correct.

Q. Do you know from what information or from what source you got the information to put in the portion that is stricken out?

A. Well, I was attempting in my own way to express what I knew Mr. Wright wanted to grant to Mr. Hall, which was the right to make the specific structure shown in the Hall application in interference, the apparatus application; and he wanted to give him that right free from suit, from infringement of the Wright patent which had the dominating claim. And I didn't do a very good job of wording it in that I gave more—I granted, rather, more than Mr. Wright had any intention of granting, when I said, "a non-exclusive license."

Mr. Caughey: Will you read that answer back, Mr. Reporter?

(Testimony of Marcia Davenport.)

Mr. Scofield: I would like to have it read, too.

(Answer read by the reporter.)

The Court: Are you referring to paragraph 3 as it is worded in the original draft, Exhibit 41? [184]

The Witness: That is correct; as I worded it.

Q. (By Mr. Scofield): And the part that is stricken from paragraph 3, then, was your understanding of what Mr. Wright intended to grant to Mr. Hall?

A. No; that is not correct, Mr. Scofield.

Q. Well, won't you state, then, what is correct?

A. That was my attempt to express Mr. Wright's intention but I did not express it correctly. This, you must understand, was a draft, and it was a draft very hastily drawn. I did not have time to check it over before it went in to be checked by them. Had it come back to me without these changes, I think I would have made substantially the same changes myself, because Mr. Wright had no intention whatsoever to grant broadly a non-exclusive license under his patent. All he intended to grant was the right to make the specific structure that Mr. Hall described in his apparatus [185] application.

* * *

Q. (By Mr. Scofield): Now, you have indicated that there was this implied license, in your opinion, under the Wright patent. Do you mean under both

(Testimony of Marcia Davenport.)

of the Wright applications or just the apparatus, or the method, or both?

A. There was no intention on Mr. Wright's part ever to grant anything under the method, and I knew that from the first. [188]

* * *

Q. Now, as to paragraph 4—before we go to paragraph 4, did you talk either with Mr. Wright or Mr. Maxwell concerning how you intended to express this license or limitation upon Hall before you composed the provision?

A. You mean paragraph 3?

Q. Yes.

A. No. As I recall it, neither one of them were in the [189] room at the time that I wrote it up and all. I had very clearly in mind what Mr. Hall wanted to grant—I mean Mr. Wright wanted to grant, but as to the expressing of it I had some trouble, and I didn't have any help because neither of them were in the room at the time; and, as I say, I was pressed for time; I was acting as my own secretary, and consequently I didn't do it right.

Q. Now, you have put in that provision and defining the exclusive license that Hall was to get, that he was to be permitted to make a structure under all claims that may issue. What did you mean by that?

A. Well, the purpose of that was, as I understood it at the time, simply to let the Patent Office determine what Mr. Hall really had. In other words, Mr. Wright would let him make what he was then

(Testimony of Marcia Davenport.)

making. As to the exclusive license, of course, it could not be—you couldn't have an exclusive license unless the patent some day issued, but it was a matter of letting the Patent Office determine those distinctions. [190]

* * *

Q. (By Mr. Scofield): If Mr. Hall never was able to convince the Patent Office that these claims were allowable and a patent issued to him, was it your intention by this provision to cut off the license?

A. No; I don't think that was the intention. It was not my understanding. In fact, I think I was under the impression that Mr. Hall had one claim indicated as allowable at that time. Presumably, if he had an allowable claim, it would issue; that is the claim that was outside the interference. I may be wrong about that, but that was my general assumption at the time.

Q. Was it your intention by the paragraph to limit his grant to that particular claim or such other claims that may issue in the application?

A. If Mr. Hall had nothing over and beyond the Wright [191] patents, then obviously he could not get a patent under which any exclusive grant could be given.

Q. That is right. A. But so far——

Q. Then he would get no license at all?

A. So far as my understanding of it was as between Mr. Wright and Mr. Hall, there would be no objection to Mr. Hall continuing to make that struc-

(Testimony of Marcia Davenport.)

ture, but, of course, there would not be an exclusive license.

Q. Under those circumstances, then, he would be only entitled to a non-exclusive license but it would be under the Wright applications or patents?

A. It would not be a non-exclusive license under the Wright patent. It would simply be such license under the Wright patent as was necessary to allow him to continue to make that particular structure.

Q. Now, would it be a license under both of the Wright patents or either one of them?

A. I have already said that the method patent was not in any sense meant to be granted [192] away.

* * *

A. It was the intention to give Mr. Hall the right to make the particular structure which was covered in his application, that is to say, that structure in all its details. Now, he not only did not get the right to go beyond that structure, but neither did he get the right to leave anything off of that structure. He was supposed to make that particular structure and this was simply an effort to clarify the fact that he was not getting anything else under the Wright structure. [202]

* * *

The Witness: Because a patent claim exactly defines something, and where, in a case like this, where you have given—of course, I am not giving you an opinion on the subject; I am not a patent lawyer—but where you have given the right to make

(Testimony of Marcia Davenport.)

that specific thing already, clearly given it, under the claims it would have the same meaning that you have in a patent claim which is allowed over a reference which might be dominated, but your limitations distinguish over the reference.

The Court: Which claims are limited to the structure of Hall?

The Witness: That is right.

The Court: If we assume that down to there, it means Wright grants to Hall the exclusive license to make and sell the precise device disclosed in the Hall application. Then what does the rest of that language mean. It is a negation, isn't it; it is a qualification?

The Witness: No. Well, it is an attempt to make it a [204] little more certain that Mr. Hall can't eliminate any of the limitations in his claims. That is what he would have to do to make his claims actually cover structure of Wright. He would either have to omit or change certain limitations, and those limitations he could not change. That is what we were trying to say and I think that is what we did say. [205]

* * *

KENNETH A. WRIGHT

a defendant herein, called as a witness by the plaintiff under Rule 43(b), being first sworn, was examined and testified as follows:

Direct Examination

By Mr. Scofield: [212]

* * *

Q. Do you remember the negotiating of this contract? A. I do.

Q. Where were the negotiations conducted?

A. The negotiations as to this particular instrument and the way it is, we met in Mr. Maxwell's office, Los Angeles.

Q. Who represented you in the negotiation of this contract?

A. Miss Marcia Davenport, as far as the attorney.

Q. Anyone else?

A. Myself as the party at interest.

Q. Did Mr. Maxwell take any part in those negotiations?

A. Not as a negotiator. He was there and took notes, but he was not authorized as a negotiator.

Q. Was Miss Marcia Davenport present during the time that these terms were negotiated with Mr. Hall?

A. You will have to limit that so we will know more specifically what you are talking about. [213]

Q. What do you have doubt about the question?

A. Well, it is too general. She was not in the

(Testimony of Kenneth A. Wright.)

room at the time Mr. Hall and I conversed about this contract, negotiated.

Q. Who was in the room?

A. Mr. William Maxwell, a party by the name of Ben McKinley, Jesse Hall, Elmer Hall, and myself.

Q. Where was Miss Davenport?

A. Miss Davenport has an office adjacent to Mr. Maxwell and, as far as I know, she was in that room most of the time while we negotiated this particular bit of business.

Q. It is indicated in the final "Whereas" clause of the contract that Mr. Hall examined evidence in your possession. Do you recall what that evidence was?

A. To the best of my recollection, there was a Jones report, American Petroleum Institute report; there were catalogs cut out by B & W; I believe, and reasonably certain, the file wrappers or files up of the two cases in interference, all the cases in interference were there on the table. I believe that is the most of it I can remember at this particular time. [214]

* * *

Q. Now, as to provision No. 3, Mr. Hall was there given an exclusive license. What was the discussion with regard to what Hall was to have an exclusive license in? [216]

* * *

A. He was given, to my understanding, exclusive license to make that device as specifically spe-

(Testimony of Kenneth A. Wright.)

cified by drawings in his application for an apparatus patent.

* * *

Q. And was Mr. Hall to be given any license or privilege [217] to use your method under this particular provision?

A. He was not given any privileges of that, according to my understanding.

The Court: Did you talk about it?

The Witness: Pardon me?

The Court: Did you talk about it with Mr. Hall?

The Witness: Yes. I stated I will not consent to any rights under my method patent.

The Court: Did you and he discuss what would happen if he sold some of these devices to oil companies, purchasers who might make use of your method?

The Witness: No; we didn't, your Honor, because that was——

The Court: Nothing was ever said about that?

The Witness: With me it was an unalterable condition imposed upon making any agreement.

The Court: Did you tell Hall that?

The Witness: Yes. I said, "I will not consent to involvement of my method patent in this arrangement."

The Court: What I am inquiring about: Did anyone during all those hours of discussion, based on what might happen if Hall sold to the Standard Oil Company some of these scratchers and they started using them according to the Wright method?

(Testimony of Kenneth A. Wright.)

The Witness: Well, that was not discussed. I don't think maybe the parties saw it that far in the future. [218]

The Court: As far as you recall, nothing was ever said or mentioned along those lines at all?

The Witness: It was an emphatic condition that I imposed, your Honor.

The Court: Did Mr. Hall say: "Well, Mr. Wright, what can I do? What good will it do me to sell these things if they can't use the method?"

The Witness: He didn't say.

The Court: Was anything like that said?

The Witness: No, your Honor.

The Court: Nothing was said at all?

The Witness: No.

Q. (By Mr. Scofield): Did you discuss with Mr. Hall that it was essential to the use of his device the procedure which you had in your method patent? A. Will you restate that question?

Q. I will strike the question. Did you discuss with Mr. Hall the method patent which you had or which was in interference with his method application?

Mr. Caughey: I think that has been asked and answered, may your Honor please. Didn't your Honor ask that question?

The Court: Well, not precisely. Overruled.

The Witness: You will have to reask the question, please.

The Court: Will you read it, please, Mr. Reporter? [219]

(Testimony of Kenneth A. Wright.)

(Question read by the reporter.)

A. I think the discussion, if it may be termed that, comprised me stating that he had filed the method application to establish a nuisance value and that I was not interested in involvement of my method patent in any settlement.

Q. (By Mr. Scofield): Do you recall telling Mr. Hall that your method patent was essential to the use of his device? A. I do not.

Q. Do you recall telling Mr. Hall that the customers would need a license under your method patent?

A. I made no such statement, according to my recollection. [220]

* * *

Q. What discussion was there with regard to the payment of royalty?

A. I believe I asked for a royalty as high as 10 per cent, which Hall protested that profit margins on the device would not permit any such royalty burden, and we finally settled at two and one-half per [222] cent.

* * *

Q. As to the filing of foreign cases covered by provision No. 7, what is your recollection about discussions with Hall concerning that?

A. I believe Mr. Hall said that these patents might have value, when, as, and if issued, in foreign countries where there was production of oil.

Q. Was it Hall that brought it up?

(Testimony of Kenneth A. Wright.)

A. I believe Mr. Hall did.

Q. And what was the discussion?

A. I asked him where he had sold his devices, and I believe he said in the Republic of Venezuela and maybe Colombia. [229] I stated that I had sold our devices in those countries and possibly two or three more, having in mind the principal oil-producing areas known at that time; and that, according to my understanding and in dealing with my patent attorneys, sale in those countries, and possibly advertisement as well, made it impossible to obtain valid patents.

Q. Did you tell Hall that?

A. I did tell him that.

Q. At the time that this agreement was being negotiated? A. That is correct. [230]

* * *

The Court: Did you have any discussion that that paragraph 8 was to be limited to apparatus patents and not any method patent?

The Witness: There was no discussion as to that that I can recall, and what discussion there was seemed to involve the devices.

The Court: Well, was there any discussion that paragraph 8 would be limited to the Hall patent, or would that include both the Hall apparatus and the Wright apparatus patents?

The Witness: It was my recollection that the discussion was about the devices.

The Court: Both the Hall and the Wright?

(Testimony of Kenneth A. Wright.)

The Witness: Both the Hall and the Wright devices.

The Court: Was there discussion pursuant to this paragraph we are discussing that if Wright fails to prosecute [238] infringers, that Hall might prosecute infringers of both the Hall and the Wright patents?

The Witness: It was my understanding that that was clarified that he could sue infringers whose device they were making and selling might be covered by the Wright apparatus patent or the Hall application which subsequently would evolve as a Wright patent.

Q. (By Mr. Scofield): How about the Wright method patent?

A. As I understood it, there was no discussion involving the method patent as applied to that.

Q. Was it your intention to give him the right to sue under your method patent?

A. It was not my intention to give him any right to use that in any suit.

Q. Was it discussed?

A. As I have just stated, I do not recall there was any discussion relating to that. [239]

* * *

Q. I put before you an advertising sheet that has been offered as Plaintiff's Exhibit 5. Do you recall having seen that before the settlement contract was made? A. I believe I did.

Q. Do you note that there is a date at the bottom of the sheet showing that it was published in one of the trade journals? A. I do.

(Testimony of Kenneth A. Wright.)

Q. That date is 1942, is it not?

A. That is correct, according to what this reads or states.

Q. On that advertising sheet is there shown a Weatherford Spring Hall scratcher?

A. There is, that is, a photograph of one.

Q. And is the structure of that scratcher one in which the bristles are fastened inside of the collar on studs or rivets?

A. I believe it is. It is not entirely clear but I believe it is stud construction.

Q. I put before you, Mr. Wright, an advertising sheet which has been identified in this case as Defendant's Exhibit A. Do you recognize the exhibit? It is a photostat of the exhibit.

A. This is not marked, Mr. Scofield—yes, it is, too. Pardon me. It is in pencil. Now, may I have your question [248] again? My reply confused it.

Q. Well, I put before you Defendants' Exhibit A and ask you if you recognize it?

A. This appears to me to be the exact duplicate of one I saw that appeared at about this time on the date shown in the lower left-hand corner.

Q. Where did that advertising sheet appear?

A. According to this photostat, it says, "The Oil Weekly."

Q. What date? A. July 7, 1941.

Q. Is there a cut of the Hall scratcher on that advertising sheet? A. There is.

Q. Can you tell from the cut how the bristles are attached to the collar?

(Testimony of Kenneth A. Wright.)

A. They appear to me to be anchored around the studs in the collar.

Q. Turn over, Mr. Wright, will you, one sheet and fold out the advertising sheet that is there and, I believe, is marked Defendants' Exhibit B? Do you find it? A. That is correct.

Q. Tell the court what that advertising sheet is and what is shown there on the sheet.

A. It appears to be identical as with the one appearing on the July 7, 1941, advertisement in The Oil Weekly. [249]

Q. And where did that advertising sheet appear?

A. It appeared in The Oil and Gas Journal, I believe.

Q. Of what date?

A. Although it does not state here, but I believe it did, on September 11, 1941. I recognize the size of this sheet, your Honor. That magazine is the only one using that size.

Q. And is there a cut of the Hall scratcher on that sheet?

A. We are still referring to this same sheet, are you not?

Q. Yes; the same sheet, Defendants' Exhibit B.

A. I think I said there was.

Q. Can you tell from that cut how the bristles are attached to the collar?

A. Well, are you not repeating? Didn't I identify this already and confirm it?

The Court: Is that Defendants' Exhibit A?

(Testimony of Kenneth A. Wright.)

Mr. Scofield: No; that is Defendants' Exhibit B.

A. This scratcher found on this Exhibit B says it was made by the Weatherford Spring Company, and it is my understanding the Weatherford Spring Company was the trade name or whatever the proper expression might be under which Mr. Hall was doing business.

Q. Is there a cut of the Hall scratcher on that advertising [250] sheet?

A. I think that has been asked and answered, Mr. Scofield.

Mr. Caughey: Just answer it again, please.

A. Yes; there is a cut of the Weatherford Spring Company scratcher, which, I believe, was made by Mr. Hall, on the sheet.

Q. (By Mr. Scofield): And can you tell from that cut how the bristles or wires are attached to the collar?

A. I believe they are anchored on the inner ends around studs.

Q. When did you first see those advertising sheets A and B, Defendants' Exhibits A and B?

A. I believe I saw them within one or two days after they were delivered by the postman to our office.

Q. You have before you on the desk a Weatherford Spring catalog which has been offered here as Plaintiff's Exhibit 4. When did you first see that catalog?

(Testimony of Kenneth A. Wright.)

A. My present recollection is I saw this somewhere about mid-year or the fall of 1944.

Q. Was it prior to or after that settlement agreement? A. I believe it was before.

Q. Turn to page 7 of that catalog. Do you find in the upper right-hand corner a cut of a Weatherford Spring scratcher? [251]

A. Yes; I do.

Q. Can you tell from that cut how the bristles are attached to the sleeve or collar?

A. They appear to be anchored around studs.

Q. In the same fashion as the bristles are attached to the collar which was offered here as Plaintiff's Exhibit No. 40, the physical exhibit?

A. May I see 40? I believe it is, your Honor, but I want to (examining Exhibit 40). It appears to be the same.

The Court: Is 40 in evidence?

Mr. Scofield: Yes, sir. That is all the direct examination. [252]

* * *

JESSE E. HALL

the plaintiff herein, called as a witness in his own behalf, being first sworn, was examined and testified as follows:

* * *

Direct Examination

By Mr. Scofield: [253]

* * *

(Testimony of Jesse E. Hall.)

Q. Was there discussion then about your being given a license under the interference counts claimed or the claims covering the interference counts?

A. There certainly was, because we were told that these—— [268]

The Court: By whom?

The Witness: By Mr. Maxwell; that these interference claims were very broadly covering the cement job.

Q. (By Mr. Scofield): Was there any discussion as to what you were actually making at that time in the way of a scratcher?

A. There was. I wanted them to know exactly what I was making and I carried my catalogs along with me and presented one to Mr. Maxwell and one to Mr. Wright. I also told them that I was working on some new improvements that were not in no application and that I had had some improvement in that catalog that was not in the application; and I didn't want to change my design. So I wanted them to know what I had been making all along. Mr. Wright said he was well acquainted with my scratcher.

Q. Did you have a catalog there at the meeting?

A. I did.

Q. I put before you an advertising catalog which has been offered here as Plaintiff's Exhibit 4. Can you identify that? A. Yes, sir.

Q. What is it? A. It was my catalog.

Q. Is that the catalog you have referred to in

(Testimony of Jesse E. Hall.)

your previous answers that you had there at the time of the settlement agreement?

A. It is. [269]

Q. Is there shown in that catalog a copy of the device that you were then making?

A. There is.

Q. On what page?

A. On the front page, the back page, page 8, and page 7.

Q. Was that the type of scratcher that you were then manufacturing? A. It was.

Q. Did you furnish the other parties who were present at the time of this settlement agreement with a copy of this catalog? A. I did.

The Court: What is the Exhibit?

The Witness: 4. [270]

* * *

Q. (By Mr. Scofield): Paragraph 8 of the agreement has to do with prosecuting infringers. What do you recall about that if discussion was had? [276]

A. I told Mr. Maxwell that I wanted the privilege to prosecute infringers, because I realized there was considerable money in prosecuting and I didn't know where Mr. Wright would be able to prosecute as and when it would be necessary, and I wanted to see it done.

Q. What did they have to say about it?

A. At that time Mr. Maxwell and Mr. Wright went into another room and had a discussion, and they came back and Mr. Maxwell said that it was

(Testimony of Jesse E. Hall.)

all right for me to reserve the right to prosecute on all those patents.

Q. What do you mean, "all those patents"?

A. The patents that was—the applications and the patent that was involved in this action.

Q. What do you mean by "involved"; what patent and applications are you referring to?

A. The two applications that were in interference and the patent and application that was in interference.

Q. Do you mean by that answer to say that you were to be given the right to sue infringers on both the Hall patents that might issue, or the Wright patent that had issued and the Wright application that subsequently issued? A. That is right.

Q. Was there any discussion about you being licensed under the Wright method patent?

A. There were. [277]

Q. What was that?

A. Mr. Wright stated that he wanted all of his method patents to go as an umbrella so that I could work under the umbrella of his patents; that he didn't want his men making a device without having the methods to use it. And I just told him that I certainly didn't want to be making a device and not have any place to sell it. We discussed that considerable.

Q. Was this word "umbrella" that you have used in the answer a word that is original with you or was that used by Mr. Wright?

A. That is a typical word of Mr. Wright. I have

(Testimony of Jesse E. Hall.)

heard of him speak of that particular word many times. [278]

* * *

The Court: Now, do you wish to take up Exhibits 55 and 56 for identification?

Mr. Scofield: I think I would like to ask this witness a few questions, your Honor, to lay the foundation.

The Court: Very well.

Q. (By Mr. Scofield): Mr. Hall, did any of these protests that were made by B & W, which were made to your customers, come [297] to your personal attention? A. Yes, sir.

* * *

Q. What ones do you recall?

A. Refreshing my memory, I recall the Gulf Oil Corporation, the Standard Oil of Texas.

Q. How did the matter of the Gulf Oil Company come to your attention?

A. First, it came to my attention by a man by the name of Teplitz.

Q. On what occasion?

A. On an occasion I was in Houston, Texas, in the early part of 1946.

Q. Was it in conversation that you had with Mr. Teplitz? A. It was.

Q. Well, give me the substance of the conversation as you recall it. [298]

* * *

Q. (By Mr. Scofield): Well, who was present? I will withdraw the question.

(Testimony of Jesse E. Hall.)

A. Mr. Teplitz and myself.

Q. And why were you talking to Mr. Teplitz on this particular occasion?

A. I was in Houston and he called me and came over to my room at the Rice Hotel.

Q. What did he say to you on that occasion?

A. He said that Mr. Wright of the B & W, Incorporated, had just called on him. [299]

* * *

Q. (By Mr. Scofield): What was it Mr. Teplitz said to you on the occasion that you saw him at the Rice Hotel? [300]

* * *

The Court: Anything that the witness says that Mr. Wright is alleged to have said through another person would be received only as an oral fact, not proof of the truth of anything that was said.

Mr. Scofield: That is right.

The Court: You may proceed.

A. Mr. Teplitz told me that Mr. Wright had just called on him. He said that Mr. Wright said that if he ran centralizers with scratchers, he would stick his pipe, and that he was in about the opinion to protest their using Weatherford Scratchers; and that he had a method that he thought that we were violating, and also he was about of the opinion that we were violating his patent on the apparatus.

Q. (By Mr. Scofield): Did this come from anybody else in [301] the Gulf Oil Corporation, that is, suggestions that B & W had made protests or threats to Gulf?

(Testimony of Jesse E. Hall.)

A. Well, at that time I went with him back to the Gulf Office in Houston and assured them that I had a license agreement, and later I had it brought down. And at a later date there came a protest from the Pittsburgh office.

Q. What was that?

A. That protest was definite. Mr. Barkus had been there and also Mr. Wright and their attorney, that we were definitely infringing them and the protest was to me that I had to do something about it.

Q. Was it indicated what you were infringing?

A. Yes.

Q. What was it they say you were infringing?

A. Infringing both their method and their apparatus patent.

Q. What did you think to do about that, or did you do anything about it?

A. I did. I tried to explain the thing as well as I could. They had their attorney brought there from New York. I waited over to see him and report the matter to you. They agreed at that time for the apparatus patent, if I would give them a letter of indemnity, that they would consider using our product. At that time they happened to have a file wrapper of the Wright patent on the method, and Mr. Teplitz [302] had analyzed it and reported to the members of the Gulf.

Mr. Caughey: Well, that is objected to, may it please your Honor, as hearsay, unless he actually knows about it as a fact of his own knowledge.

(Testimony of Jesse E. Hall.)

The Witness: I was there at the meeting while this was going on.

The Court: Was this a part of the conversation?

The Witness: Yes, sir. Mr. Teplitz reported in to the conversation. There was Dr. Foote, Dr. Hull, Dr. Muscat, Dr. Kennedy, and Teplitz, which were all research men, and their attorney from New York and myself. And Mr. Teplitz reported at the meeting that they didn't think the Gulf or the Weatherford, either one, was infringing the Wright method patent. So Mr. Houghton, who was the attorney, gave us the go-ahead sign on that.

The Court: What did he say? Did he make a sign or did he say something?

The Witness: No. Mr. Houghton said, "You may go ahead on that. We are not infringing it." And he asked me, he says, "Will you give us an indemnity against the infringement on the apparatus?" I told him I would.

Q. (By Mr. Scofield): Did you?

A. I did.

Q. Now, were there any other customers that you had difficulty with when B & W made these threats against them? [303]

The Court: I take it you are not offering any statement by someone in the Gulf Oil Corporation that there was no infringement as proof of that fact, are you?

Mr. Caughey: No.

Mr. Scofield: No, sir.

(Testimony of Jesse E. Hall.)

The Court: You are offering it merely to show what was said, that oral fact?

Mr. Scofield: That is all, that is all.

The Court: The evidence is received for that limited purpose solely. Now, about some other customers.

A. There were the Shell Oil Company.

Q. (By Mr. Scofield): What were the circumstances there?

A. The Shell Oil Company reported to us——

Q. Who in the Shell Oil Company reported?

A. At this time I don't remember which one of the Shell Oil Company members it were. I think the first report that I had of any conversation was from Mr. Walter Elliott, at that time was the drilling superintendent, probably, of this division, or manager, one.

Q. Proceed.

A. And that they had a report that we were infringing, and the matter was turned over to you to handle. That is about all I know about it.

Q. Did you have any difficulty with regard to the Standard of California? [304] A. I did.

Q. What were the circumstances there?

A. After getting a report that we were infringing the Standard of California, I went to Frisco and I seen Mr. Toussaint and he sent me over to the patent attorneys after talking with him some bit, and I talked to another man who was his assistant.

Q. Did he tell you what B & W had protested about?

(Testimony of Jesse E. Hall.)

A. He did. And he said that until the matter could be straightened up, that they would put a stop on the Standard Oil of California using the Weatherford products.

Q. What occurred then?

A. I told him I would immediately get on it.

Q. What did you do? Did you do anything?

A. I did. I turned the matter over to you.

Q. And was the result of these protests some of the letters that were put in here this morning?

A. It was.

Q. What other companies or customers of yours did you have difficulty with after protest had been made by the B & W?

A. The Texas Company, various different divisions.

Q. What divisions came to your personal attention?

A. The Division of New Orleans, principally.

Q. What were the circumstances there?

A. I went in to see Mr. Keyes, after getting a report from that district that they were infringing the material, and [305] I was told that I would have to do something to satisfy the Texas Company before they would continue using our stuff.

Q. (By Mr. Scofield): How, if at all, did these protests in any way affect your business?

A. It did.

* * *

Q. How did it affect your business?

(Testimony of Jesse E. Hall.)

A. Well, in places like the Standard Oil it was cut off; by the Shell it was cut off for a length of time; the Texas Company, it was cut off, and many other companies.

Q. Were you put to any expense to satisfy these customers?

A. Yes. I have engaged about—there is two other of my boys and myself, and the different engagement that I have had you on, has been a total expense in that line. [306]

Q. Did you have any difficulty with the Union Producing Company with regard to the protest of B & W?

A. Yes; I did. I have a protest which came from their attorneys, that until this lawsuit is over that they had totally cut the use of our scratchers off.

Q. Did you have business with the Union Producing Company? A. I did.

Q. Over what period of time?

A. Well, it was over the principal period of time of '47, '48, and into '49.

Q. Did your organization do any work with them?

A. We taken them on from—I don't believe that they had ever run any scratchers formerly, and we taken them on and went through a complete schooling process with them, and we were running on practically every well they drilled up to the time that this matter come up.

Q. When did that schooling process start?

(Testimony of Jesse E. Hall.)

A. A schooling process started during the year of '47 and '48.

Q. What do you mean by a schooling process?

A. Well, running this equipment is quite new and quite different from the conventional method of running pipe to keep them out of trouble, and it requires quite a bit of schooling before the companies can run their equipment and their pipe the way that we recommend it. [307]

Q. Did you personally take any part in that schooling process of the Union Producing Company? A. I did. [308]

* * *

The Court: Isn't this analogous to saying that plaintiff lost a customer that he spent a great deal of money to acquire?

Mr. Scofield: Yes. And if that was just a loss of a customer by the usual competitive practice, well and good; but not so here. What they have done is come in and, we contend, misuse these patents against our customers, and by the misuse of these patents we have been put to irreparable damage.

The Court: It seems to me you might be able to show what business you have done with this concern and what profit you have made from that [310] business.

* * *

Q. How long had you been doing business with the Union Producing Company when they stopped?

A. On or about two years.

(Testimony of Jesse E. Hall.)

Q. And over what period or over what territory were you covering with them, that is, where was their business?

A. We were doing business with them in their entire operations.

Q. What was this process that you were recommending to them that B & W was threatening or was protesting against?

* * *

Q. (By Mr. Scofield): Were they protesting against a process of yours?

A. They were. They were protesting against the method [314] by which we were running our equipment with the Union Producing as violating the Wright method patent. They were protesting to them against our equipment as violating their apparatus patent.

Q. And what was this method?

Mr. Caughey: May your Honor please, may I understand that these are protests that were reported to him?

Mr. Scofield: He said that.

The Court: Made to him.

Mr. Caughey: Made to him by some official of the Union Producing Company.

Mr. Scofield: That is right.

Mr. Caughey: Is that it?

Mr. Scofield: That is right.

Mr. Caughey: I still make an objection. I believe it will stand as to being hearsay, if your Honor please.

(Testimony of Jesse E. Hall.)

The Court: How else could it be proved?

Mr. Caughey: There is no proof in the record that we ever sent anything to the Union, except by this witness' testimony; so it is certainly hearsay. If they want to bring the parties here to whom we protested, well and good; that is something else. They could have taken depositions if they desired in this case. It has been pending long enough.

Mr. Scofield: This witness has already said, your Honor, that the protest came to him from the Union Producing Company; [315] it was told to him that they had protested.

The Court: Mr. Caughey's objection is that there is no foundation shown to indicate that the defendants here or either of them ever protested to that concern.

Mr. Scofield: Well, I thought he had already answered that. I think that he has already answered that.

The Court: How?

Mr. Scofield: By saying that the Union Producing Company, members of the Union Producing Company or employees, told him that B & W had protested to them.

The Court: Well, that is rank hearsay, isn't it?

Mr. Scofield: Not at all. They had that in conversation; that is, the Union Producing Company men called him in.

The Court: That would be only evidence of what the Union Producing Company men said.

* * *

(Testimony of Jesse E. Hall.)

Q. Were protests made? A. Yes, sir.

Q. From the Union Producing Company?

A. Yes, sir.

Q. And how?

A. The superintendent protested to us and we were sent to his attorneys at Houston, and also at Shreveport.

Q. And who was the superintendent? [316]

A. Mr. Quiggles.

Q. Did you talk with him? A. I did.

Q. And what did he say?

A. He said for the time being, until this lawsuit was over, that his attorneys had advised, at the present time had advised him to stop the use of our equipment until we could either satisfy him or until after this lawsuit was over; and if it was favorable, why, then we could have the business back. [317]

* * *

The Court: Just ask him what was said. Objection overruled. I will receive the conversation for the purpose of showing the reasons stated by a customer for ceasing to do business with the plaintiff.

Mr. Scofield: That is right.

Q. And will you state that?

A. Mr. Quiggles told me that the B & W people had protested that we were violating their patent of their method and apparatus, and that he had turned it over to their attorneys and the attorneys had advised him not to use our stuff until we had made other things satisfactory. I asked him about put-

(Testimony of Jesse E. Hall.)

ting up a letter of guaranty and he said he thought that would be satisfactory. The letter of guaranty was sent to him and he called back and said there had been still another protest, and now they were going to hold it up until after the results [319] of this lawsuit.

Q. Did he indicate to you what the device was or did he indicate to you that it was your apparatus that they were objecting to?

A. Scratchers inside of centralizers.

Q. Did he indicate to you whether or not they objected to the process that the Union Producing Company was using? A. That is right.

Q. And what was this process that you recommended to the Union Producing Company that they were objecting to?

Mr. Caughey: That is objected to. He can tell what process he recommended, but when he says "they are objecting to," I object to that.

Mr. Scofield: Strike "that they were objecting to." That you recommended?

A. I recommended the spacing of scratchers on the outside of the casing for the length of their cement column, their expectation of cement column, at certain intervals throughout the column; and also, by putting centralizers, spiral centralizers, at certain intervals throughout the column. I recommended to circulate the casing in the hole, as the scratchers would take the mud off and the centralizers going in the hole before the weight would get too heavy, and to keep the pipe reciprocating

(Testimony of Jesse E. Hall.)

throughout the movement of the cement job, and also through the cleaning up the well bore until the plug bumped, [320] until the cement job was done, so that the well bore would be cleaned and the annulus then pumped full of cement.

Q. And what was the apparatus they were objecting to? A. It was this——

Mr. Caughey: That is the same objection, may your Honor please. He may ask what apparatus the Union Producing Company was using or that he was selling to them; that is something else.

Q. (By Mr. Scofield): What was the apparatus you were selling the Union Producing Company?

A. The apparatus we were selling the Union Producing Company was a scratcher with a band with springs tangentially outward. They were fastened on the inside with rivets and also fastened on the inside with little wickers that are bent from the band of the collar and lugs to fasten it onto the pipe so that the scratcher could be reciprocated on that pipe and also rotated on the pipe.

Q. What other companies informed you that they were going to discontinue the use of your equipment? A. The Texas Company.

Q. Where? A. At New Orleans.

Q. Did you have any conversation with anybody there? A. I talked with Mr. Keyes.

Q. What did he say? [321]

A. Mr. Keyes said for the time being that he

(Testimony of Jesse E. Hall.)

was going to have to discontinue the use of the Weatherford——

* * *

Q. (By Mr. Scofield): Who was present at this conversation? A. Mr. Keyes and myself.

Q. When was it? A. It was last fall.

Q. What was the occasion of the meeting?

A. It had been reported to me that they were going to discontinue the use of our equipment.

Q. What did Mr. Keyes say?

A. Mr. Keyes told me that he had been informed that the use of our equipment was violating the Wright patents, both the method and apparatus.

Q. Had you been selling this company?

A. I had.

Mr. Caughey: May it be understood——

Q. (By Mr. Scofield): Over what period of time?

Mr. Caughey: May it be understood, if your Honor please, than any conversations or any statements the witness makes as [322] to conversations with Mr. Keyes will be for the purpose of showing the reason why that particular corporation did or did not cease doing business or discontinue their business or interfere with the business, rather than the facts.

Mr. Scofield: I did not get that last part.

Mr. Caughey: But not for the purpose of showing the defendants made any protest.

The Court: Of course, the conversation with

(Testimony of Jesse E. Hall.)

some third person is not proof that the defendants did anything.

Mr. Caughey: That is what I wanted understood.

The Court: But the conversations may show dealings between the parties.

Mr. Caughey: Yes, sir.

The Court: And, as such, they are direct evidence of the fact. These conversations are offered to show the course of dealings between the plaintiff and certain customers, and of the reasons stated by the customers for ceasing to do business with the plaintiff.

Mr. Caughey: Yes. As to that your Honor has already ruled on that. I just wanted to be sure.

Mr. Scofield: That is all I asked him.

Mr. Caughey: That these rulings would be made as to the conversation with Mr. Keys, as the ruling with reference to the conversation with Union Producing Company.

The Court: Yes; the evidence will be received in the same [323] manner as to these conversations.

Mr. Scofield: You may proceed.

(Question read by the reporter.)

A. That is the Texas Company. I had been selling the Texas Company over a period, I would say, of about five years.

Q. Had you been selling this company at a profit? A. I had.

* * *

(Testimony of Jesse E. Hall.)

Q. (By Mr. Scofield): What other companies, Mr. Hall, did you have difficulty with, what other customers? A. So-Hi.

Q. Where was that?

A. Standard Oil of Ohio. [324]

Q. Where was that?

A. Southern Louisiana and out of Houston.

Q. And did you have any conversations with employees of that company?

A. Yes; I talked with the superintendent.

Q. Where was that conversation?

A. Down near Sulphur, Louisiana, Lake Charles.

Q. About what date.

A. Oh, it was sometime, as I recall, in the early part, probably, of '48, sometime in '48.

Q. Did they discontinue buying from you?

A. They did.

Q. Did he indicate why they discontinued?

A. He did.

Q. What did he say?

A. He said that it had been reported to him that we were violating the B & W patents, both the method and the apparatus.

Q. Have they started buying again from you?

A. I don't believe so.

Q. Did you ever have any difficulty with the Union Sulphur Company? A. I did.

Q. Who did you talk to in that organization?

A. I don't recall the name at the present time. But I [325] talked with the man that was the su-

(Testimony of Jesse E. Hall.)

perintendent of the corporation. I sent my son down there to see if he could satisfy him.

Q. Was that a good account with you?

A. It was a very good account.

Q. Did they discontinue buying?

A. They have.

Q. Are they buying at the present time?

A. No, sir.

* * *

Mr. Caughey: Just a second. That is objected to as calling for a conclusion of the witness, "quit because of the protests."

The Court: Sustained.

Q. (By Mr. Scofield): Do you have any other companies that you had difficulty with?

A. Barnsdall.

Q. Who in that organization did you talk to?

A. I don't recall the men's names, and I talked to both the superintendent and the engineer in that field. I sent my son down there to handle that particular field.

Q. Did they discontinue the buying?

A. They did. [326]

Q. What measures did you take to satisfy these customers, if any?

A. I reported them, various ones, to you, and trying to get the legal matter to satisfy them that we were not infringing no one's patents; also, by putting up a personal guarantee for indemnity.

Q. Did any of these companies indicate that they had been shown this settlement contract?

(Testimony of Jesse E. Hall.)

A. Yes.

Q. Did any of them comment on it, do you recall? A. They did.

Q. What did they say and who said it? First, give the individual.

A. Mr. Vollmer, with the Gulf Research, stated—— [327]

* * *

Q. Give the time of this conversation, Mr. Hall.

A. This conversation was in the year of '46.

Q. Who was there?

A. Mr. Kennedy, Mr. Vollmer, Mr. Westcott, Mr. Houghton, Mr. Teplitz, Dr. Foote, and another one of their engineers—I forget his name at the minute—and myself. They stated that they had seen the contract between the B & W, Incorporated, and myself, and it had been pointed out to them that the equipment that we were selling did not come under the contract and that we were violating the apparatus, their apparatus patent, and also violating their method patent of the B & W, Incorporated. [328]

* * *

Q. At the time that this settlement agreement was being negotiated did Mr. Maxwell or anybody indicate to you what the method patent covered?

A. They did.

Q. What did they say? [329]

A. It covered the steps of cementing and producing through the casing.

* * *

(Testimony of Jesse E. Hall.)

Q. Are there any other companies, now, that you recall that were customers who discontinued the purchase of your equipment? [330]

* * *

The Witness: The Sunray—— [331]

* * *

Friday, May 27, 1949—2:00 P.M.

Cross-Examination

By Mr. Caughey: [332]

* * *

Q. There was only one copy of the draft agreement, that is, the original draft agreement, wasn't there? A. So far as I know. [351]

* * *

Q. Now, Mr. Hall, what was your understanding —pardon [353] me, sir—of that portion of Exhibit 34, the agreement, which reads as follows:

"The Party Wright agrees to and by these presents does grant an exclusive license to the said Hall under all claims that may issue on the above-entitled applications or either of them of Hall and which claims are limited to the structure of Hall and are not such as to be applicable to the structure of the application and patent of the Party Wright."

What was your understanding of the meaning of those words at the time you signed Plaintiff's Exhibit 34?

A. I understood the meaning of those claims,

(Testimony of Jesse E. Hall.)

that I was getting a license to make, so that I could make anything that would apply to the structure of my application for the structure to my device that I was then making, and that Wright would be getting a license so that I could not make anything that would apply to the structure of his device; he could not make anything that would apply on the structure of my application. In other words, we were getting a cross-license arrangement. [354]

* * *

Mr. Caughey: May it please your Honor, I have prepared and presented copies of an order in connection with the motion of defendants to dismiss the counter-claim for cancellation.

The Court: Very well. Will you hand it to the clerk?

Mr. Scofield: It is approved as to form, your Honor.

* * *

Q. And you have turned to paragraph 8 which is the last paragraph; have you done that, sir?

A. I have.

Q. What was your understanding when you signed this agreement as to what right you had to prosecute infringers under this paragraph?

A. I had the rights to prosecute any infringers upon the patent that might issue, anything pertaining to a violation of the patent.

Q. And the reason that you wanted to do that was so as to enable you to protect the scratchers that you were manufacturing [359] and selling, is

(Testimony of Jesse E. Hall.)

that correct? A. That was right.

Q. And according to your construction of the contract, those are the scratchers with the studs inside, is that correct?

A. No, sir. I felt that anything that might fall a violation to the patent. We discussed it. Mr. Wright's financial situation might become such that he couldn't carry on litigation to someone entering the field that would be violating the patent. At that time I felt that it would be my duty to carry on to protect the field according to the patents.

Q. But your reason for wanting to do that was to enable you to protect the scratchers which you were manufacturing and selling from infringement by others, is that correct?

A. That is correct; and still farther, to protect the patent in whatever violation the party might be violating in. [360]

* * *

Q. (By Mr. Caughey): You understood from paragraph 3, then, that you were licensed to manufacture the scratchers like Exhibit 40, is that correct?

A. That would be one of the specimens that I understood that I could manufacture.

Q. Well, what other specimens?

A. Whatever might come under the scope of the patent that I might get. [361]

Q. Then, as I understand your testimony, you understood that you were to be allowed to manu-

(Testimony of Jesse E. Hall.)

facture any scratchers that came under the scope of the claims that might be allowed, is that correct?

A. That is possibly correct.

Q. Is that right?

A. No; it is not right entirely, because the fact that the scratchers that is there is the exhibit that we had when we written the contract, and that is what we were making.

* * *

Q. Was it your understanding of paragraph 4 at the time that you entered into this agreement that you were to receive an exclusive license under all claims that might issue upon your [362] applications? A. That is right.

Q. Regardless of whether they were limited to the structure of Hall or not?

A. They would have to be limited to the structure of me if they was to issue upon them.

Q. That is not my question, Mr. Hall. My question is: Did you have such a license regardless of whether it was limited to the structure of Hall or not? Was that your understanding?

A. My understandings were that I was to have a license, an exclusive license, limited to the structure of Hall.

Q. All right; we can agree to that.

A. According to what I was manufacturing.

Q. What particular structure of Hall did you understand that the license was to be limited to?

A. Not any particular structure, part of it.

Q. Did you understand that you were to have

(Testimony of Jesse E. Hall.)

a license under the structure shown in the Hall apparatus application?

A. I explained that there was a modification or an improvement on the type that we had always been making that was shown in the application. Mr. Maxwell explained that there was absolutely no difference in the function of those things, limited to the way the springs were fastened in; that they had nothing to do with the invention at large. [363]

* * *

Mr. Caughey: I will ask him that question.

Q. Did you understand at the time you entered into this agreement that you were to have a license not only under the structure that was shown in the Hall apparatus application 388,891, but, in addition, under the scratchers which you were making like Plaintiff's Exhibit 40? A. That is right.

Q. That was your understanding?

A. That was.

Q. Did you understand you were to have a license under any other structures? [364]

A. Any other structures that the claim might be written and that would come under the type of structure that claims could be written and issued from the application.

Q. Then, if I understand your testimony, you are now saying that you thought you would have a license under all claims that might issue on the application, is that correct? A. That is correct.

Q. Regardless of what it was limited to?

A. That is correct.

(Testimony of Jesse E. Hall.)

Q. That was your understanding?

A. That is it.

Q. Isn't it a fact that you were only concerned at the time you entered into this agreement of protecting the devices which you were licensed to manufacture under the agreement?

A. No. I was concerned about anyone that would be violating the patents, because of the fact they would be entering the field and, as I well realized, the patents were a monopoly and I was interested to keep the people out of the field that was not entitled to be in there.

Q. Even though you were not manufacturing a device like the accused in the infringement action might be manufacturing?

A. Even though I was not manufacturing the type of structure, but the general thing in principle that would have been manufactured. [365]

Q. And did your right to sue infringers go only to the broad counts of the interference, according to your understanding?

A. That would be one way to interpret my understanding. However, I don't know how that we could have a suit that just claimed your broad counts. They might be infringing some of the other counts that would be novel to my type, and not take in those claims that were common.

Q. Then, as I understand your testimony, Mr. Hall, you understood that you were to be allowed to sue infringers upon all patents which might issue which were involved in the interferences, and upon

(Testimony of Jesse E. Hall.)

all claims that might issue on those patents, is that your understanding?

A. That is my understanding. [366]

* * *

Q. And what is the name of the corporation which is at the present time manuafacturing scratchers in Weatherford?

A. Weatherford Manufacturing Company.

Q. And what is the name of the corporation which at the present time is selling the scratchers which are manufactured by the Weatherford Manufacturing Company?

A. Weatherford Oil Tool.

Q. What was the specific type of scratcher which you were manufacturing when you ceased business, Mr. Hall?

A. I was making several different types.

Q. Name them.

A. Well, I were making one type to apply on the casing with a cylindrical travel which rotated itself on the casing and applied to the casing by lugs, with tangential whiskers like this other has, which the tangential feature is one of our major features which we are now making in the scratchers.

The Court: The witness has referred to exhibit——

Mr. Caughey: The witness is referring to Exhibit 40.

The Witness: May I use that to explain what I

(Testimony of Jesse E. Hall.)

am making now—what was being made in December?

The Court: Yes.

A. This tangential feature is the main feature that I felt that I wanted to protect in my scratchers all the while. [385] It allows in the tight hole for the scratcher to come plumb to here and reverse, which, even if it was straight out and drug down and come into reverse, it would have to roll up and would not do it. That was the feature of the scratcher of its operation.

The Court: You mean of the scratcher portion being attached to the cylinder in a tangent?

A. That is right.

The Court: Which would permit it?

The Witness: To reverse on the cylinder smaller than this diameter. This scratcher will reverse on this cylinder something like half an inch bigger than the band, while the springs are about five inches greater. We felt that that particular feature was the major feature that we were after. [386]

* * *

Q. You have testified this morning that you disposed of your property by which you manufactered scratchers. Have you disposed of the license agreement, Plaintiff's Exhibit 34? A. No, sir.

Q. Or endeavored to transfer it in any manner?

A. No, sir.

Q. Have you disposed of any of the applications for patents, either domestic or foreign, which are based wholly or in part on any inventions dis-

(Testimony of Jesse E. Hall.)

closed in your applications which were in interference? A. No, sir.

Q. Do you own any stock in any of the corporations which you referred to this [394] morning? A. No, sir.

Q. Are you employed by any of those concerns?

A. No, sir.

Q. Are you an officer or director in any of those corporations? A. No, sir.

The Court: Do you have some contractual arrangement with them?

The Witness: No, sir. [395]

* * *

Mr. Caughey: Yes, sir; we do. We offer at this time the file history of application 627,013 which was supplied to us by Mr. Scofield, and ask that it be marked as defendants' exhibit.

The Clerk: K.

Mr. Caughey: K, and also request that if we find upon examination that there are any discrepancies or errors in that, in checking with a certified copy of the file wrapper of that particular application, that we may be allowed to make the corrections. Is that agreeable?

Mr. Scofield: Well, that is a copy of a certified copy from the Patent Office, and I am agreeable that any corrections or any discrepancies that you find can be corrected.

The Court: The truth may always be shown.

Mr. Scofield: That is right. But I do object to the offer, because it is immaterial to any of the

(Testimony of Jesse E. Hall.)

issues that are now in this case, your Honor. [401]

The Court: It may well be; it may well prove to be, but it is a continuation of the application Serial No. 388,891, is it not?

Mr. Scofield: A continuation in part.

The Court: So it may have some bearing.

Mr. Caughey: I might say, your Honor, that there are letters in evidence from Mr. Scofield, directed either to defendants or defendants' counsel, which state that they will assign this application and perhaps others which are in the Patent Office, recognizing that they are the property of the defendants.

The Court: What is the purpose of the offer here?

Mr. Caughey: The purpose of the offer here, may your Honor please, is, in the first place, to show that there are inventions in the Patent Office that this plaintiff should be compelled to assign.

The Court: There is no issue about that, is there?

Mr. Scofield: There is no issue about that.

Mr. Caughey: I think there is, may your Honor please. I think, as I stated this morning——

The Court: The plaintiff does not dispute your contention, as I understand it.

Mr. Caughey: But he has not assigned them. He has not made any assignment. He does not refute our contention but he does not assign them. [402]

Mr. Scofield: I do not intend to assign this, your Honor. The contract provides for 388,891 and 528,-

(Testimony of Jesse E. Hall.)

183, that is, the apparatus and the method of Hall is assigned by the contract itself, and in this case there is no question about assignment of this particular application at all. [403]

* * *

Q. (By Mr. Caughey): Mr. Hall, did you make any sales in foreign countries in 1944?

A. Mr. Caughey, we have filled any order that might [427] come in. There are sales to foreign countries up until 1947.

The Court: Were there any in 1944?

The Witness: There was a small—I couldn't say whether there were or not.

The Court: There were some?

The Witness: I would say there were some. They are small orders.

Q. (By Mr. Caughey): Did you also make some foreign sales in 1945?

A. I would say that we made sales every year since I have been in the scratcher business to foreign countries.

Q. That is up to date? A. Up to date.

Q. Isn't it a fact that you ceased making any foreign sales in July of 1947?

A. How is that, now?

Q. I say, isn't it a fact that you ceased making foreign sales in July of 1947? A. No, sir.

Q. Are you sure about that?

A. I am very sure about that.

Q. Then it is your present testimony that you

(Testimony of Jesse E. Hall.)

continued to make foreign sales in 1947 and also in 1948 until you ceased doing business? [428]

A. I continued to make foreign sales in some of the foreign countries until the books closed the transactions in December, 1948. In other words, I have made foreign sales every year that I have been in business. [429]

* * *

Q. (By Mr. Caughey): Mr. Hall, did any of these [432] corporations which you testified to previously, the Porto Rican corporation and the Weatherford Oil Tool Company or the Weatherford Manufacturing Company assume any of the obligations of this license agreement or any of your obligations thereunder? A. No, sir.

The Court: Are those corporations operating under any licenses from you?

The Witness: No, sir. [433]

* * *

Q. Now, Mr. Hall, did you see a Wright scratcher in Long Beach in the latter part of 1939 or the early part of 1940 [436] at Dominguez Hill?

A. In '49?

Q. '39.

A. Why, I couldn't tell you when I have seen a Wright scratcher. I have had——

Q. I am asking the specific date, whether or not you saw Wright's scratchers being in a well, in a demonstration well at Dominguez Hill, in the latter part of 1939 or the early part of 1940, or a B & W scratcher if you want to call it that?

(Testimony of Jesse E. Hall.)

A. You mean at the Bardine, where Jones & Bardine——

Q. Yes. A. Yes.

Q. And you saw this on oil well casings at that time?

A. No; I don't believe it was oil well casing. It was very small casing, just a little sample thing. I don't know whether you would call it oil well casing or just a piece of pipe.

Q. And that scratcher was free to move up and down on the pipe, was it not?

A. I don't recall.

Q. Didn't you examine the scratcher on the pipe? A. I did not. I had no opportunity to.

Q. So you can't say whether or not it did or did not move longitudinally on the pipe? [437]

A. I cannot. [438]

* * *

Q. When you contacted the officials of the Barnsdall Oil Company that you have previously testified to did you advise them of the litigation here in California?

A. If this litigation was on, which it was, I am sure I did, because everyone I did contact I have told them about this litigation.

Q. And did you advise the officials of the Texas Company as to the litigation here in California when you contacted them in the fall or summer of 1948? A. I have. [445]

* * *

(Testimony of Jesse E. Hall.)

Q. I believe in your direct testimony you also mentioned the Standard Oil of Ohio, is that correct?

A. Yes. We call that the Sohio Oil Company.

Q. And that is spelled S-o-h-i?

A. S-o-h-o.

Q. S-o-h-o?

Mr. Scofield: H-o.

Q. (By Mr. Caughey): Is that the same as the Standard [451] Oil of Ohio?

A. That is right.

Q. You talked with their superintendent at near Sulphur. Do you recall what that superintendent's name was?

A. Yes. They have had several superintendents down there, but I believe this superintendent's name was—there was two men at that time, a man by the name of James and also a man by the name of Brown.

Q. And that conversation took place sometime in '48?

A. Mr. Caughey, to my best knowledge it did. We have a report, very extensive on that, because we went down there and ran a well for them and we had quite a controversy between the two superintendents. One of them wanted to use the B & W stuff, and they were there, and the other one was wanting to use the Weatherford stuff; so we have that written up. I will be glad to produce it.

Q. Did you tell those officials about the litigation in California?

A. That was the reason that one of them didn't

(Testimony of Jesse E. Hall.)

want to use our product, that we were infringing. We was able to satisfy the other one.

Q. My question, Mr. Hall, is whether you told them about the litigation here in California, this litigation here?

The Court: What difference does it make?

Mr. Caughey: He says "infringing." This is not an [452] infringing action, your Honor.

The Court: What difference does it make whether he told them or not? You have asked that question several times. What materiality has it?

Mr. Caughey: It may be material, if your Honor please, because frequently if companies know there is some litigation involved, they quit buying and may quit buying from both of them. I have a right to bring that out.

A. I would say I did, Mr. Caughey, because of the fact that we were hunting for every advantage to tell our customers that we had a right to sell them and we seen fit to bring this litigation; and I would say that we told every customer that we was brought to a question with. [453]

* * *

Q. In your testimony you referred, in connection with the paragraph as to foreign applications, that there was some statement as to a one-year's time under which applications were to be filed. Do you recall that, Mr. Hall? A. Yes.

Q. Will you just state again what that was so we will [457] get it straight?

A. We had a discussion whether or not we

(Testimony of Jesse E. Hall.)

wanted to carry the patents to foreign countries. I asked Mr. Wright if he wanted to carry them there in the combine that we were, and he said at that time that he didn't know; that they didn't have enough business. He didn't know whether he wanted to file in foreign countries or not. And I told him that I wanted them filed in foreign countries and that I would agree at that time to furnish him $1,500 to start filing them in the foreign countries, but not over that, and they could exercise that within a reasonable length of time; and I think we discussed a year or less.

Q. When you say "exercise that," you mean you would put your $1,500 up for a year, but after that you would not put it up any longer; is that what you mean?

A. In that agreement. We had an agreement that if I put up the $1,500, I got a continued license into the foreign countries; and if I didn't put it up, I didn't get any. I think that is the way that agreement was really turned out. And I imagine that if I had followed along in the agreement, that I would have had to put it up at any length of time, a year later or two years later.

Q. So it was not your understanding that after the year period was up you did not have to put up any more money; that was not your [458] understanding?

A. No. My understanding was this: That we only had a certain time that I could go on my patents without filing them in foreign countries, and

(Testimony of Jesse E. Hall.)

if Mr. Wright wanted to come along, he could come along within a reasonable length of time; if not, I was going to have to go ahead and file mine. That was my understanding.

Q. Then, as I understand your testimony, the year period had to do with your own applications in your own name, is that correct?

A. No; it isn't correct. That is correct as far as mine is concerned, but I felt that due to the fact that I had been in interference, that I had some type of interest in those broad claims that were in interference, and that if they were filed in a foreign country, I certainly wanted a license under them at that particular time. [459]

* * *

Wednesday, June 1, 1949—9:30 A.M.

* * *

Cross-Examination
(Resumed)

By Mr. Caughey:

Q. I show you a catalog, Mr. Hall. Do you recognize that as a catalog of Weatherford Spring Company? A. It is.

Q. Was that published on or about February 1st, 1947, [469] the date that appears thereon?

A. The data in there—I don't recall the publishing of it, but the data was gathered in the year 1946.

Q. And it was published in '47?

(Testimony of Jesse E. Hall.)

A. I rather think that the issue came out in '46. It came out as the entire——

Mr. Scofield: We will stipulate that that was issued in 1947, the date that is in the catalog.

Mr. Caughey: Thank you.

The Court: Has that been marked for identification?

Mr. Caughey: No, sir. I ask the clerk to mark this for identification as Defendants' Exhibit L.

The Court: Do you wish to offer it in evidence?

Mr. Caughey: Yes, sir.

The Court: Is there objection?

Mr. Scofield: No objection.

The Court: Received into evidence.

The Clerk: Catalog of June 1, 1947, the Weatherford Spring Company, L in evidence.

Q. (By Mr. Caughey): I call your attention to the second page, Mr. Hall, and the words "The Patented Weatherford Reversible Scratcher." When you used those words in the catalog, would you tell me what they mean, if you know?

A. The patented Weatherford Reversible Scratcher is that idea of tangential springs and the collars that are [470] slidably rotatable on the pipe.

Q. Did you have a patent on that feature at the date the catalog was published?

A. No. We have patents on the broad idea of the—we have claims allowed on many of those different features, and we have the patent that was discussed between me and Mr. Wright.

(Testimony of Jesse E. Hall.)

Q. You are referring to Patent 2,374,317 that appears below the picture of a Weatherford scratcher?

A. That could be one of the patents that we were referring to.

Q. Well, did you refer to any other patents?

A. Well, I am telling of the other applications then of which there were claims allowed on.

Q. But you did not have any patent as of that date? A. That is correct. [471]

* * *

Q. Was the Gulf Company concerned at all about any charges of infringement they reported to you that had been made by Mr. Wright or B & W?

A. Yes; they were for considerable time. [477]

Q. Did they cease doing business with you?

A. No; they did not.

* * *

Q. I show you your testimony in the second deposition in the case of Smith vs. Hall, which was taken on May the 5th, 1948, and call your attention to page 61 and ask you to read the parts between which I have placed pencil marks. [478]

Q. You have read that? A. I have.

Q. You so testified in that deposition?

A. I did.

Q. And that particular portion reads as follows, does it not:

"Q. This dissatisfaction you encountered with

(Testimony of Jesse E. Hall.)

Pittsburgh, was any part of that in regard to any patent question or patent infringement?

"A. We discussed the patent infringement or some part of it.

"Q. Was that what Gulf was complaining of, the patent situation?

"A. Absolutely not.

"Q. The only thing they were dissatisfied with was that they had too much equipment, is that right? A. That is right."

The Court: Did you so testify?

The Witness: I did. [479]

* * *

Q. Now, Mr. Hall, you testified on cross-examination as to certain structures that you were manufacturing, and used the word "tangential." What did you mean by "tangential" when you used that phrase or that word?

A. I meant the springs would stick out non-radial.

Q. Non-radial? A. Yes.

Q. Then when you used the word "tangent" you did not use the word "tangent" in the way it is ordinarily used in scientific terms, is that correct, that is, at a tangent to the surface?

A. Well, the only way that I can explain it, they call them tangential as they stand, but when they operated, they operated in non-radial swing and the scratchers, to speak of the real true word, would be "non-radial." [481]

Q. Well, any position where the scratcher is

(Testimony of Jesse E. Hall.)

other than radial would be tangential; is that your understanding?

A. Either tangential or non-radial. If they start in to tangential position when they go in the hole, they immediately become in a non-radial position.

Q. Then, as I understand your testimony, any position that is off the radial is non-radial, is that correct? A. That would be correct.

Q. And also is tangential, is that correct?

A. I am not familiar to say that tangential would carry through radial swing. I don't know about that. But I do know that we speak of it being tangential because they stick off direction, and if they are in that direction anywhere in a non-radial portion or a tangential direction, why, then the scratcher will operate as a reversible scratcher. That is our feature that we call reversible scratchers.

Q. Then, as I understand your testimony, Mr. Hall, any time that the scratcher, that is, the scratching element, is off of radial, you consider it to be tangential within the meaning of what you stated was your tangential scratcher?

A. Within our terms, I would say yes. [482]

* * *

(Testimony of Jesse E. Hall.)

Redirect Examination

By Mr. Scofield:

Q. Did the Gulf Oil Company ever question you with respect to the patent situation?

A. They did.

Q. In what regard?

A. They questioned me in regard of the method in which we were using the scratchers; they questioned me in regard to the apparatus.

Q. Who questioned you for the Gulf Oil Corporation?

A. The information, either a letter—both a letter and Mr. Teplitz asked me to come to Pittsburgh. I went to Pittsburgh and interviewed all of the heads of the G. R. & D. C. and the attorney there.

Mr. Caughey: May we have the foundation laid here, please, for this?

The Court: Lay the foundation, time, place, and persons present.

Q. (By Mr. Scofield): When was this meeting? A. It was in near the middle of '47.

Q. In Pittsburgh? A. Yes.

Q. And what offices? [483]

A. At the offices of the G. R. & D. C. at their head offices.

Q. And who was present at this meeting?

A. Mr. Vollmer, Mr. Kennedy——

Q. Just say who these men are as you go along.

(Testimony of Jesse E. Hall.)

Mr. Caughey: If you know.

A. Well, Dr. Westcott is the manager of the Gulf Research; Mr. Kennedy is his assistant; Mr. Kennedy is his assistant; Mr. Teplitz is also his assistant; and there were one or two others present. I don't know who they were.

The Court: Who is Mr. Vollmer?

The Witness: Mr. Vollmer is assistant, the head assistant to Mr. Westcott. He is what you would call probably a vice-president of G. R. & D. C.

The Court: And what is G. R. & D. C.?

Q. (By Mr. Scofield): What is this G. R. & D. C.?

A. G. R. & D. C. is the Gulf Research. It is an organization that takes over all of the guiding hand for the Gulf in their research and their type of equipment, okaying it and everything.

Q. Go ahead and relate the conversation which you had with them in regard to the patent situation.

A. They had went to quite a bit of preparation theirselves at the time I got there, I suppose, because they had various file wrappers and what [485] nots.

Q. Was Mr. Houghton there? A. Yes.

Q. Who is Mr. Houghton?

A. Mr. Houghton is the Gulf's patent attorney. He is from New York. Through the discussion, first, we taken up the method, and through that discussion it was discussed that we were not violating—that they were not violating the method patent.

Q. Who discussed that?

(Testimony of Jesse E. Hall.)

A. Mr. Houghton, Mr. Kennedy, Mr. Teplitz, Mr. Westcott and myself.

Q. Did you have anybody with you?

A. I did not.

Q. Was this Mr. Houghton the same gentleman who sent this wire that has been offered here as Plaintiff's Exhibit 18? A. It is.

The Court: Your next question.

Mr. Scofield: Go ahead and continue with the conversation with regard to this discussion on the patent situation, if there was any other.

A. After discussing the method—they had been informed by the B & W that they were violating that method patent in cementing—it was pointed out by Mr. Teplitz from their application that the Wright method had nothing to do with the cement job and that the Wright method was doing absolutely [485] opposite of what the Gulf was doing with my equipment. At that time it was decided that they was not violating the method patent and the risk on that was done away with. Then they taken up the apparatus, and at that time the apparatus weren't too thoroughly gone into. They decided there might be a possible risk in one claim of the apparatus patent, and that I gave them a guarantee against and indemnifying so that they would continue using the equipment. [486]

* * *

The Court: I would suggest, Mr. Scofield, if you are advised, that you withdraw this first amended complaint that you were supposed to file and you gentlemen take some time and then assert it. In view of the fact counsel themselves are agreeable in the way they approach these subjects, I do not think it would be amiss to suggest to even show it to the defendants and discuss it with them. You both want these issues properly framed and you wish to litigate them and you wish them determined in the proper manner. You are both interested in seeing that the issues are properly raised.

Mr. Scofield: Exactly, yes; we are, of course.

The Court: I think it would not be amiss for counsel to collaborate, even, upon the amended complaint.

Mr. Scofield: I am sure we will have no difficulty about that. Is it your desire at this time to adjourn the case until a later date? If it is, that is, to permit us to get these pleadings in order—that is, you have indicated from what you said that you thought that would be advisable to do—I would like to have you issue a preliminary injunction against these people to prevent them from further molesting and coercing these customers of ours until such time as this case is tried. That is one thing, of course, that we are here about; that is the important thing in this case.

The Court: Mr. Scofield, if the plaintiff prevails on this Antitrust cause of action, you have won all the litigation [530] so far as the future is

concerned, haven't you? So, to issue the injunction now would be in effect to pre-judge the case.

Mr. Scofield: No; I do not believe so, your Honor. That is the only thing I am asking, is to hold the matter in status quo until such time as the case can be tried. I do not mean that your action would in any way affect the situation as far as we are concerned.

The Court: Does not the industry as a whole understand that this entire matter is in controversy and in litigation?

Mr. Scofield: The whole industry does not understand the situation, though. [531]

* * *

JOSEPH FRANCIS FLINT

called as a witness by the defendants, being first sworn, was examined and testified as follows:

The Clerk: What is your name, sir?

The Witness: Flint, Joseph Francis Flint.

Direct Examination

By Mr. Caughey:

Q. For the record, would you please give your name, Mr. Flint?

A. Joseph Francis Flint.

Q. Where do you reside?

A. In Sulphur, Louisiana.

Q. Who are you employed by?

A. The Union Sulphur Company, Inc.

Q. What is your position in that organization?

(Testimony of Joseph Francis Flint.)

A. Drilling superintendent.

Q. How long have you been drilling superintendent?

A. Since February the 12th, 1940, for the Union Sulphur Company.

Q. And prior to that were you engaged in the oil [537] business? A. Yes.

Q. For a considerable period of time?

A. Since 1917.

Q. Does the Union Sulphur Company use scratchers, Mr. Flint? A. Yes, sir.

Q. They do? A. Yes, sir.

Q. How long have they been using scratchers?

A. Since 1940.

Q. When you began using scratchers in 1940 what make of scratchers did you use?

A. B & W.

Q. What scratchers are you using at the present time? A. B & W.

Q. As superintendent what do you have to do with the purchase of scratchers and other oil well equipment for Union Sulphur Company?

A. I don't understand just how you mean.

Q. I say, as superintendent—you are drilling superintendent? A. Yes.

Q. Does that include any duties in connection with the purchase of equipment? [538]

A. Yes. I purchase the equipment and send it out or order it out to the wells or have one of the men order it out, but I usually do it myself, and

(Testimony of Joseph Francis Flint.)

the scratchers and all that stuff, I order it myself, as a rule.

Q. You say you order it yourself. Do you recommend or choose what particular make shall be used? A. Yes.

Q. You say you are using B & W scratchers at the present time? A. Yes.

Q. Have you continuously used the B & W scratchers since 1940? A. Yes.

Q. Have you used any other scratchers except B & W? A. Yes.

Q. What other kind? A. Weatherford.

Q. In connection with the drilling of a well do you program the well or order in advance what scratchers or other equipment is to be used? Would you tell us how it is done?

A. Well, as a general rule, we don't order the scratchers out or that kind of equipment, and even the casing, until after the electrical log has been run. That is on what we call the oil string or the long string. On surface casing, why, that is more or less a standard procedure, so many scratchers on [539] the bottom joint of the surface string.

Q. When you get the electric log what do you do; do you order scratchers at that time or what do you do?

A. After the electrical log has been studied and the engineer, the exploitation engineer or the geologist, whoever happens to be in charge of the particular well, studies it and tells us where the sands are that they want to protect, then they give us the

(Testimony of Joseph Francis Flint.)

top and the base of the sand, then we decide on the number of scratchers to use and the position of them.

Q. Who actually orders the scratchers, orders a particular make of scratchers at that time? Who does that? A. I do.

Q. Will you state whether or not it has or has not been your practice to use B & W scratchers whenever you could for the Union Sulphur Company? A. It has been.

Q. Since you started using them in 1940?

A. That is right.

Q. Are you familiar with the scratchers that are used on wells of the Union Sulphur Company, whether they be Weatherford scratchers or B & W scratchers? A. Yes.

Q. That is, as to whether they are used on a particular well? [540]

A. Yes.

Q. From your knowledge would you state how many scratchers since 1940 you think, in your opinion and from your observations as drilling superintendent——

Mr. Scofield: I object to that——

Q. (By Mr. Caughey): ——how many Weatherford scratchers have been used?

Mr. Scofield: I object to that, your Honor, as speculative, the best evidence, of course, being the logs of the wells themselves of what scratchers were used on the particular wells.

Mr. Caughey: May your Honor please, this——

(Testimony of Joseph Francis Flint.)

The Court: Overruled. You may answer.

The Witness: What was the question, again?

The Court: Please read the question to the witness, Mr. Reporter.

(Question read by the reporter.)

Mr. Caughey: By Union Sulphur Company.

A. I should think that 200 would be the maximum.

Q. And that is from 1940 to date?

A. To date, yes.

Q. On what occasions would you use Weatherford scratchers?

A. Well, the principal reason we would use them, if we did use them, we had started with the B & W's and then the [541] Weatherford scratchers would be used if the B & W were not available, immediately available, when they were required. It so happens that they might not have got enough in stock with one, why, we would finish up with the other.

Q. That would be the only occasion?

A. That, and on one or two occasions I recall, through courtesy to the representative of Weatherford.

Q. Are you using Weatherford scratchers at the present time? A. No.

Q. That is, Union Sulphur Company?

A. No.

Q. Have you received any orders or directions not to use Weatherford scratchers from those above

(Testimony of Joseph Francis Flint.)

you in the Union Sulphur Company? A. No.

Q. When did you stop using Weatherford scratchers, if you can remember?

A. '46 or '47 I should say.

Q. Would you please state whether or not the stopping of using Weatherford scratchers had anything to do with any threats of infringement or anything in connection with patents of B & W?

A. No.

Q. Do you know whether or not B & W have any patents? [542]

A. I don't know whether they do or not. I guess they have.

Q. Has your attention ever been called to any patent that B & W owned? A. Have I what?

Q. Has your attention ever been called to any patent that B & W owned?

A. I don't think so. I don't recall.

Q. Have you used B & W scratchers in considerable quantity, Mr. Flint? A. Yes.

Q. Can you give us approximately how many have been used to date by Union Sulphur Company?

A. I should say since 1940 we have used between —well, easily 4,500 of them.

Q. Easily 4,500?

A. I would say that would be conservative.

Q. Are you at all interested in the outcome of this litigation, Mr. Flint? A. No, sir.

Q. You are not a stockholder or in any way connected with B & W, are you? A. No, sir.

(Testimony of Joseph Francis Flint.)

Q. Have you ever talked to Mr. Hall, Mr. Jesse Hall who is sitting here at the table to my [543] right? A. No; I don't believe I have.

Q. Have you ever talked to either Mr. John Hall, here in the room, or Mr. Elmer Hall?

A. I believe I have talked to this gentleman here in the front seat. I believe he was in to see me on one, possibly two occasions. I believe that is the gentleman.

Q. You are referring now to John Hall, is that correct?

A. To the gentleman in the front seat.

Q. The gentleman with the glasses?

A. In the front seat, yes, with the glasses.

Q. Yes.

A. I am not sure, but I believe that was the one.

Q. And when was that, if you recall?

A. I believe it was around '45 or '46. I am not sure.

Q. And did that conversation have anything to do with patents or anything like that? A. No.

Q. What was the occasion for the conversation, if you know, and tell who else was present?

A. They brought in a sample of their product in a steel container to show me how it worked, with the idea of interesting us in purchasing their product.

Q. Was anybody with Mr. Hall at the time?

A. I think there was. I believe there were two

(Testimony of Joseph Francis Flint.)

gentlemen came in together. I can't recall who the other one was. [544]

* * *

Mr. Scofield: I will give the court the assurance that I won't take any action that will be prejudicial to their interest but, of course, what will be prejudicial to their interest will have to be my judgment.

Mr. Caughey: I think it is only fair that Mr. Scofield supply the defendants, that is, defendants' counsel with copies of the applications and with all the correspondence and so on in connection with the prosecution of the same.

The Court: I would assume that Mr. Scofield would keep you advised.

Mr. Caughey: He hasn't done it to date. It has not been done.

The Court: Do you feel that is your duty under the agreement, since one of the beneficiaries of the trust is the defendant Wright?

Mr. Scofield: Of course, the question we have not decided here yet is about what they are entitled to in these applications.

The Court: The question is now as to information.

Mr. Scofield: I, of course, up to date have given Mr. Caughey the information on one application, which was one of the continuations, and the other day I brought him down to [577] date on that; and I have no objection to giving him copies of the prosecution up to the present time. That I agreed to do and will do it.

The Court: And keep him advised of developments.

Mr. Scofield: Yes, sir; in that case.

Mr. Caughey: How about the other cases of foreign applications?

Mr. Scofield: The other case, I do not think that I will commit myself, that is, I do not think that it is a matter of very much importance, but that case is a case on which we are attempting to get claims, your Honor, that cover the Multiflex and they have been opposing that in the Patent Office.

The Court: Well, of course, there is the difficulty. One side says that the other one is breaching the agreement.

Mr. Scofield: That is right.

The Court: You gentlemen seem to do so well together, I was going to say something I don't wish to say. I am here to adjudicate causes. That is my duty. I never attempt to force litigants to settle. I always assume that counsel know their business and they know how to settle their cases.

But I am going to tell you my observation and my reaction to this case. If I ever saw a case that should be settled by the parties, it seems to me, in their own interests, it looks to me as if these people are just going to open this field for other people and kill each other off with litigation, [578] and the end will be other people will be in the field and defeat the very purpose of their original settlement. [579]

* * *

Tuesday, September 30, 1952—11:00 A.M.

* * *

Mr. Scofield: If it please the court, when we adjourned in June of 1949, I believe it was, we had taken the testimony of some witnesses, I believe Mr. Hall, Mr. Wright, Mr. Maxwell, Miss Marcia Davenport, all having to do with this contract that is here in litigation.

Since that time there have been a number of matters before you from time to time in the way of injunction, summary judgment and what-not. On March 30th, 1951, we brought a motion here before you for summary judgment, asking cancellation of the contract. On April the 4th of 1951, or April the 6th, the defendants responded by a motion for summary judgment, also asking for cancellation of the contract which is here in litigation.

So it would seem at that time that the two parties were in agreement that the contract should be cancelled.

The Court: But upon different grounds and different consequences.

Mr. Scofield: Yes. Not necessarily on different grounds but for different reasons and for different consequences, as [3] you say.

The Court: Suppose you review that briefly as to plaintiff's theory of cancellation and defendants' theory of cancellation.

Mr. Scofield: The plaintiff's theory was that the contract had been breached.

The Court: By the defendants?

Mr. Scofield: By the defendants.

The Court: In a material way?

Mr. Scofield: In a material way.

The Court: Namely?

Mr. Scofield: These protests that had been sent out to the companies, the customers of plaintiff. As you recall, there was some evidence and exhibits in here, and there will be evidence that we will put in now, to the effect that this contract has been breached since 1946.

The Court: In what way?

Mr. Scofield: By these protests, later by the adoption of the defendants of the plaintiff's device in the form of the Multiflex and Nu-Coil scratchers.

The Court: It is plaintiff's contention, is it not, that all of these acts allegedly done by defendants effected a repudiation of the license provisions of the agreement of September 15, 1944?

Mr. Scofield: That is right. [4]

The Court: Does that clearly state the plaintiff's contention with respect to the grounds of cancellation?

Mr. Scofield: Yes, I think so.

The Court: What consequences does plaintiff claim would ensue from the cancellation if the court orders it?

Mr. Scofield: We ask, as you recall, in our summary judgment that, with the cancellation of the contract there shall be a reassignment of these applications and that the parties go their way, restore them insofar as you would be able to restore

the parties, and put us back in the condition that we were when the contract was made.

The Court: In effect declare a rescission insofar as possible to effect a rescission?

Mr. Scofield: That is correct; yes.

The Court: What are the defendants' claimed grounds?

Mr. Scofield: The defendants also ask——

Mr. L. E. Lyon: We would prefer to state our own position.

Mr. Scofield: I would just as soon that they did, or may I state it?

The Court: Suppose Mr. Scofield states it and if you wish to dissent from it, Mr. Lyon, you may tell me.

Mr. Scofield: The defendants' position was that, in the first place, Hall, after this contract had been made abandoned, the first application that he had filed, that was in interference, [5] as you recall, when the first settlement agreement was made. That in doing so, that the plaintiff—or that the defendants had lost whatever inventions there were in that early application. That the second application which was filed, which was the 627,013 application filed as a continuation in part of the first——

The Court: The first being 388,891?

Mr. Scofield: That is correct. That the second application was not a continuation of the second, that is, it did not carry on the invention; that it was for a different invention and that in the prosecution or that in the filing of the third application it was

a continuation of the second, the third being Serial 55,619.

That we had also breached the contract and had lost the rights to them that were contained in the original 388,891 application.

They said, further, that this prosecution—they objected to the prosecution that we had breached the contract in not paying royalties after August or July of 1946, and that we had not furnished them with the prosecution of these later filed applications.

Now, that, in substance, was their objection to or their contention of how we had breached the contract, this settlement agreement. [6]

And they asked for cancellation in the form of a summary judgment motion, at the same time that we came here before you asking for the same relief.

The Court: What consequences do the defendants contend ensue from cancellation?

Mr. Scofield: Well, I think I can give you that from their prayer, which was in their pleading, that is, that is the substance of the prayer which they filed in connection with their last pleading.

They wanted you to hold that No. 627013, which was the second application, was fraudulently filed and not a continuation in part of the first application.

The Court: That is the ground for cancellation. Now, assuming that the court should agree to a cancellation in favor of the defendant, what consequence would result?

Mr. Scofield: Well, they wanted us to pay royalty up to the time that the contract was can-

celed, both on U. S. and foreign sales; they wanted us to pay to the defendants all monies due to the defendants under the contract, to the date of such cancellation, which of course would include those royalties; they wanted the plaintiff to pay to the defendants damages which the defendants had suffered by reason of the plaintiff Hall's fraudulent manipulation of these applications in the Patent Office; they wanted the plaintiff to pay the defendants damages incurred by reason of the fraudulent manner [7] in which the plaintiff had abandoned these applications, which is about the same thing; and they wanted us to pay the defendants damages incurred by reason of Hall's breach of the contract due to failure to abide by the provisions of paragraph 6, which, as I recall, had to do with the records, that is, keeping the records, the records of sales and the royalties. I will check that 6.

The Court: In brief, the defendants sought termination of the contract with damages for breach?

Mr. Scofield: That is right.

The Court: The plaintiff called it in effect a rescission.

Mr. Scofield: Yes, and damages for breach, damages for breach prior to the time, that is, during this period up to the time that they breached the contract.

The Court: Damages to the extent that rescission could not be had. Isn't that a fair statement of it? To the extent that the parties could not be restored to the status quo ante?

Mr. Scofield: That is correct, yes.

The Court: And the plaintiff sought damages?

Mr. Scofield: That is right.

The Court: So the defendant did not seek any rescission of the contract. He sought merely a declaration that it was terminated for a material breach and an award of damages for the breach? [8]

Mr. Scofield: Well, I would think it would be the same, it would be rescission. They asked for cancellation, rescission of the contract.

The Court: Did they ask that the parties be restored, as far as possible, to the status quo ante?

Mr. Scofield: Yes.

The Court: Is that right?

Mr. L. E. Lyon: Yes.

The Court: In other words, it has boiled down to where the only difference between you was who was to pay damages, if any, to whom?

Mr. Scofield: I think that is where we are, as we start this lawsuit.

The Court: That is, whose breach——

Mr. Scofield: Whose breach was first.

The Court: ——whose breach would serve as ground for cancellation of both——

Mr. Scofield: Yes, that is correct.

The Court: ——of the contract?

Mr. Scofield: That is correct.

The Court: And each claims that the other's breach would serve as the ground?

Mr. Scofield: That is right.

The Court: That is the reason it was impossible —they both sought cancellation, both parties sought

it upon different [9] grounds and upon a different state of alleged facts, the plaintiff alleging that the defendant's breach serves as the ground for cancellation, and the defendant alleging that the plaintiff's breach serves as the ground?

Mr. Scofield: Yes, I think that is correct. Of course, as I was pointing out, we were both in agreement that it should be cancelled. The only question, then, was, and that was for your Honor to determine, who breached it first, and where the damages are, to whom the damages should be assessed, for whom.

The Court: It was not conceded by either party that he had breached it?

Mr. Scofield: No, no, of course not.

The Court: The question was, who had breached it?

Mr. Scofield: That is correct.

The Court: And that was very much in issue, very much in dispute, and still is, I take it?

Mr. Scofield: That, of course, is the thing, that is, the evidence that will now be put in will, I hope, establish who was the first to breach and what those breaches were.

The Court: Now, Mr. Lyon, up to this point have we fairly covered that phase of the contentions of the parties, as you understand them, on the motion for summary judgment?

Mr. L. E. Lyon: On the motion for summary judgment, yes, your Honor, both parties seem to come into court and say, "We [10] want to get rid of the contract, we can't live under it," and that is

still the defendants' position. In fact, I am willing to stipulate that right now, in order to shorten this court's consideration of this case, that the contract stand cancelled.

The Court: And the parties be restored, insofar as possible——

Mr. L. E. Lyon: And the parties be restored insofar as possible.

The Court: ——to the status quo ante the execution of the contract?

Mr. L. E. Lyon: Yes.

The only question being the time of determination that the contract stands canceled, because, of course, that will be determinative of a great many of the measures of damages that are asserted on behalf of both parties.

For instance, we have one other prayer in our complaint which has not been stated, and that is, your Honor will recall that it has been asserted throughout the trade that the defendants' manufacturing and selling a Nu-Coil and Multiflex scratchers were violating certain rights claimed by the plaintiff under the agreement of September 15, 1944. That claim, together with their demand for a royalty payment of $2.50 a scratcher, has very materially injured the defendants' business. [11]

Now, if the contract is declared that it was no contract as of August, 1946, you can see that that leaves the plaintiff in the position of making an assertion to the trade for which there was absolutely no basis.

The Court: Where do you get the "August, 1946"?

Mr. L. E. Lyon: That is the date when they stopped paying royalties—I mean, on the 1st of July it was, and, as we view it, rescinded the contract at that time, together with their prior breach which occurred in November of 1945 but which first came to the defendants' knowledge in May or June of 1946, of the abandonment of this No. 388,891 application, and it was at that time, relying on that breach and the fact that no patent could issue under paragraph 3 of the agreement of September 15th, that the defendants took the position that the plaintiff had no rights, exclusive or otherwise, under the particular form of scratcher that they were then making, because they had repudiated and destroyed their rights by abandoning that application without notice to the defendants. And it is the defendants' position that that clause was limited precisely to the applications that are identified in the contract, and not to some other application, and I believe the defendants' position in that regard is very well supported by this plaintiff's position as stated and affirmed by the Fifth Circuit Court of Appeals in Hall v. Keller, 180 Fed. 2d 753, at 756, where the Fifth Circuit Court [12] of Appeals has taken the position with respect to a continuing application that it was not within the terms of an assignment of the original application, particularly as defined in that case and in which the parties are the same as standing before this court.

Now, we take the position not only that that con-

tract is very limited and was limited to the precise structure, but that by abandonment of that application they breached that contract and in such a material way as to amount to a rescission of it, or an abandonment of the contract.

The Court: Does the defendant contend that, upon cancellation of the contract, either party insofar as you can will reassign?

Mr. L. E. Lyon: We are perfectly willing to reassign these applications or any of them, in fact any asserted right we might have under these so-called continuation-in-part applications, which, incidentally, the Patent Office has held that the second application, No. 627,013, was filed in fraud, and it has issued an order to show cause, returnable on October 5th, why that application should not be stricken from the files as an application filed in fraud.

Mr. Scofield: The Patent Office, your Honor, has not so held. They have issued an order to show cause, but they have not held that it has been filed in fraud.

The Court: I understand now what we have to do is: [13]

Number one, determine what that agreement of September 15, 1944, was;

Number two, which party first breached it in a material way such as to warrant rescission or cancellation;

Number three, to what extent rescission is possible and restoration of the status quo ante the agreement

is possible, and what damages, if any, should be awarded to an innocent party.

Mr. L. E. Lyon: I think that is correct.

The Court: Or to compensate him to the extent for which restoration of the status quo ante is not possible.

Is that a fair statement of the issues?

Mr. L. E. Lyon: I think that is a very fair statement of the issues now before the court at this time, your Honor.

Mr. Scofield: Yes, sir.

Mr. L. E. Lyon: Except there is one other issue before the court at this time, and that is on termination of the contract there is a claim for infringement of the patents, and an answer thereto which is also before this court.

The Court: That is, a counterclaim for the alleged infringement of the defendants' patents?

Mr. L. E. Lyon: Of the defendants' patents.

Mr. Scofield: Yes. That was stayed, as you recall, until we complete the trial of these issues that we have before us now.

Mr. L. E. Lyon: And it was my understanding that it [14] would proceed immediately upon finishing of the evidence with regard to the contract issue.

The Court: The counterclaim contains claims for declaratory relief under the contract, also, does it not?

Mr. L. E. Lyon: That is right.

The Court: And a second count for alleged in-

fringement of patents Nos. 2,338,372, 2,374,317 and 2,392,352 of the defendants?

Mr. L. E. Lyon: That is correct, your Honor.

I don't know that the offer that we made to stipulate that the contract stand canceled will materially shorten the issues unless we can agree perhaps between us upon a date of such cancellation, but I don't see that—it would shorten it to this extent, that the court would not have to determine that there was a breach by either party sufficient to warrant the cancellation of the contract, under the California law which is very clear, but, if we got rid of the contract, if it is the desire of both parties to get rid of the contract and then determine the question of breach, in effect, it might shorten the trial of this case a great deal.

The Court: In other words, determine who first breached by a material breach?

Mr. L. E. Lyon: That is right.

Is that agreeable?

Mr. Scofield: That is what I suggested, determine who [15] first breached the contract and assess the damages accordingly.

The Court: Well, may it be stipulated that the contract may be declared canceled as of the date upon which the court may find from the evidence that one party or the other first committed a material breach which would justify the rescission or cancellation by the other?

Mr. L. E. Lyon: That is satisfactory to me.

Mr. Scofield: Yes, and the restoration, such restoration as you can.

Mr. L. E. Lyon: If possible.

Mr. Scofield: Yes.

The Court: And, as I understand, both parties concede that upon such cancellation the court shall effect a rescission insofar as practical?

Mr. Scofield: That is right.

The Court: To restore the status quo ante the agreement of both parties?

Mr. L. E. Lyon: That is correct, your Honor.

The Court: And then award the innocent party, assess damages against the party who committed the breach justifying the cancellation by the other, such damages as may be necessary to restore that status quo ante?

Mr. Scofield: That is exactly along the lines of what I was suggesting when I opened.

The Court: Is that in accordance with your [16] feelings?

Mr. L. E. Lyon: That is in accordance with my feelings, your Honor. [17]

* * *

Mr. Scofield: Now, your Honor, I might interrupt here to say that the testimony that I am now reading has to do with Mr. Wright's knowledge of what Hall was manufacturing prior to and at the time that the settlement agreement was made.

No. 14626

United States
Court of Appeals
For the Ninth Circuit.

JESSE E. HALL, WEATHERFORD OIL TOOL COMPANY, INC., a Corporation; WEATHERFORD SPRING COMPANY OF VENEZUELA, C.A., a Corporation; HALL DEVELOPMENT COMPANY, C.A., a Corporation; WEATHERFORD, LTD., a Corporation; WEATHERFORD INTERNACIONAL, S.A., DE CV., a Corporation; NEVADA LEASEHOLD CORPORATION, a Corporation; PARKER INDUSTRIAL PRODUCTS, INC., a Corporation,

Appellants,

vs.

KENNETH A. WRIGHT and B & W, INC., a Corporation,

Appellees.

KENNETH A. WRIGHT and B & W, INC., a Corporation,

Appellants,

vs.

JESSE E. HALL, WEATHERFORD OIL TOOL COMPANY, INC., a Corporation, et al.,

Appellees,

Transcript of Record
In Nine Volumes

Volume II
(Pages 505 to 1020)

Appeals from the United States District Court for the Southern District of California, Central Division.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif. 11-7-55

No. 14626

United States
Court of Appeals
For the Ninth Circuit.

JESSE E. HALL, WEATHERFORD OIL TOOL COMPANY, INC., a Corporation; WEATHERFORD SPRING COMPANY OF VENEZUELA, C.A., a Corporation; HALL DEVELOPMENT COMPANY, C.A., a Corporation; WEATHERFORD, LTD., a Corporation; WEATHERFORD INTERNACIONAL, S.A., DE CV., a Corporation; NEVADA LEASEHOLD CORPORATION, a Corporation; PARKER INDUSTRIAL PRODUCTS, INC., a Corporation,

Appellants,

vs.

KENNETH A. WRIGHT and B & W, INC., a Corporation,

Appellees.

KENNETH A. WRIGHT and B & W, INC., a Corporation,

Appellants,

vs.

JESSE E. HALL, WEATHERFORD OIL TOOL COMPANY, INC., a Corporation, et al.,

Appellees,

Transcript of Record
In Nine Volumes

Volume II
(Pages 505 to 1020)

Appeals from the United States District Court for the Southern District of California, Central Division.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—10-7-55

DEPOSITION OF KENNETH A. WRIGHT

"Q. When did you make that comparison with the Hall scratcher?

"A. I think about August or September of 1941, I believe, and I believe the number of wires is stated in some of his advertising material.

"Q. How were the Hall wires anchored in that particular scratcher that you investigated?

"A. With a stud anchoring the inner terminus of the wire to the inside of the sleeve.

"Q. Was it a stud or a row of studs around the collar? [20]

"A. Each wire was anchored on a stud, and I believe each stud held two wires. That is what I wish to state.

"Q. Where were these studs located with respect to the collar which has supported them?

"A. They were located centrally, that is, halfway between the two wires extending outwardly through the holes from which they originated in the band of the scratcher.

"Q. Was there a row of studs extending circumferentially about the collar equidistant from each edge?

"A. That is the manner in which I described it. I said centrally between the holes from which the wires extended.

"Q. And the wires were attached to these studs, or anchored, at their inner ends?

"A. That is correct, on the inside of the band."

Mr. Scofield: Now, I would like to skip to page

(Deposition of Kenneth A. Wright.)

61, beginning at the top. This testimony, your Honor, has to do with when Hall was granted the license under the 1944 agreement. Was it at the time that the contract was executed or was it at some other time, as has been indicated here, under paragraph 3 of the contract which said that Hall had an exclusive license under claims that may issue? Now, this is Wright's testimony with regard to [21] that:

"Q. With the contract before you, please state, if you will, your understanding of what rights were granted Hall under provision No. 3.

"A. My concept of this Paragraph 3 was that Hall was limited to the manufacture of a device as specifically described in the drawings of his then pending application—insert the word 'apparatus' before 'application,' and that under my understanding there were three claims which the Patent Office had not included in the interference counts, and that he was to be permitted to make that device so described, and under its specific claims, and to use that device outside of the zone or sphere of application to the oil industry covered by Wright's application and patent.

"Q. Now, won't you please point out in that provision where any such grant appears?

"A. Yes. 'The party Wright agrees to'—strike that. I will reread from the paragraph numbered three. 'The party Wright agrees to and by these presents does grant an exclusive license to the said Hall under all claims that may issue on the above-

(Deposition of Kenneth A. Wright.)
mentioned applications or either of them of Hall and which claims are limited to the structure of Hall and are not such as to be applicable to the application and [22] patent of the party Wright.' It is extremely clear."

* * *

Mr. Scofield: "Q. Under that provision is it your interpretation and view that Hall got any license whatsoever until a patent issued?

"A. Why, license would, in my concept, start with the granting of the—of the so-called license, by the execution of the instrument, having in mind that there would be a slight delay between the signing of this instrument and the actual issuance of the patent, which would be the claims issued by the Patent Office." [23]

* * *

Mr. Scofield: "Q. Now, my question is: By this provision, according to your understanding, Mr. Wright, did Mr. Hall acquire a license when the contract was executed?

"A. I believe he did, and in the manner described by the answer to the previous question you asked me."

Mr. Scofield: Now skip to page 70. This testimony, your Honor, has to do with whether or not Hall obtained immunity under the Wright patents on the execution of this agreement of September 15th.

"Q. Now, did he acquire any rights in the claims of your other application which was in interference, and which became patent 2,374,317, under this set-

(Deposition of Kenneth A. Wright.)

tlement agreement, according to your understanding of the agreement?

"A. My understanding would be and is that he was exempt or—strike 'exempt.' He could not be legally prosecuted as an infringer under the broad claims appearing in the application which subsequently was—became No. 2,374,317. [24]

"Q. Where does that immunity appear in the terms of the settlement agreement, Exhibit 34?

"A. As words, I do not see them in that sense, but as the granting of a license to manufacture, it can't be negative and positive both. The license was granted, and under the concept of the problems at hand it would then be, in my opinion, a condition under which, as I have just enumerated.

"Q. Am I to understand that you read that immunity in by inference, into the terms of this agreement?

"A. If not by inference then by the basic nature of the instrument and what it covered."

Mr. Scofield: We now skip to page 80, and this testimony, your Honor, has to do also with Wright's knowledge of what Hall was making before and at the time and after the 1944 agreement was signed. Beginning about midway down:

"Q. In previous answers you have indicated that you saw the Hall-type scratchers in which the studs or rivets were used to anchor the wires to the collar as early as 1941.

"A. I believe I specified what time in 1941.

"Q. Did you see any of these Hall scratchers,

(Deposition of Kenneth A. Wright.)

and I am referring to the type which I have described, between that date in 1941 until the date of the agreement, [25] September 15, 1944?

"A. I believe I did.

"Q. Do you recall where you saw them?

"A. I have recollection of seeing some on a casing at a well in Long Beach. I saw some that had been pulled from a well in Long Beach, had been run on a liner, and I don't recall having seen any number that would specifically come to my attention and fix itself as having any import.

"Q. Does that pretty well cover the instances you recall between the date in 1941 and the date of the agreement?

"A. I believe it does. It is my present recollection that it does.

"Q. Now, after the signing of the agreement, up to August, 1946, on how many occasions did you see this type of Hall scratcher in the field or elsewhere?

"A. I believe I saw some on a Standard Oil Company well at Seal Beach, and I believe I saw some in the Shell Company yard at Signal Hill. Other than that I do not have any independent recollection that I can now presently remember.

"Q. During the period from 1941 to the date of the contract do you recall having seen literature, advertising of Hall's in the trade papers? [26]

"A. I saw the original advertisement of his. I saw the next advertisement of his, which I believed to be his next advertisement, and I believe it is a part of the record in this case, and I believe that—

(Deposition of Kenneth A. Wright.)

in fact, I am positive I saw a catalog of his. I do not know the exact date because—strike 'because' and substitute 'and'—the particular catalog that I refer to does not contain a date on it, and I usually read the trade journals.

"Q. Did this advertising contain cuts of the Hall scratchers using the studs for anchoring the wires?

"A. The first two that I mentioned do have, and after that I did not make examinations sufficiently close to determine whether they did or did not.

"Q. After the date of the agreement, September 15, 1944, to August of 1946, do you recall advertising of Hall's other than what you have mentioned that pertained to the scratchers?

"A. I know of a catalog which I believe—it is a four-page catalog or a six-page catalog, perhaps, that was put out by Weatherford Spring Company, and it contains various statements about scratchers. In fact, it is rather profuse in its talk about numbers of scratchers but lacking in detail as to construction. [27]

"Q. Is that all the advertising you recall having seen?

"A. That is all that I independently call to mind.

"Q. Your counsel has furnished me with an advertising pamphlet of the Weatherford Spring Company, and I will ask you if you can identify that as one of the advertising folders you refer to?

"A. That is one that I referred to.

"Q. When did you see that folder first?

(Deposition of Kenneth A. Wright.)

"A. I believe I saw it first in late '45.

"The advertising pamphlet of the Weatherford Spring Company, which the witness has identified, and which he has testified about is marked for identification as Plaintiff's Exhibit 43."

Mr. Scofield: Now, skipping to page 88. Now, your Honor, this testimony has to do with protests that were made to the Gulf Oil Company. And I start reading about the middle of the page:

"Q. I show you a wire, which is Plaintiff's Exhibit 19, sent by Bruce Barkis to the Gulf Oil Company. Do you recollect when Barkis sent that?

"A. I recollect Barkis sending this particular wire.

"Q. Where was it sent from? [28]

"A. From Long Beach, according to my recollection.

"Q. Were you present when the wire was sent?

"A. I believe I was.

"Q. Did you have any conversations with any employees of the Gulf Oil Company after the sending of that particular wire? A. Yes.

"Q. When were they? First state how many occasions.

"A. You are specifying after the sending of the wire?

"Q After the sending of the wire.

"A. My present recollection is a trip to Pittsburgh in June of 1947, and a trip to Pittsburgh in either October or November of 1947, and on both of those trips I interviewed officials—strike 'officials,'

(Deposition of Kenneth A. Wright.)

substitute 'employees' of the Gulf Research and Development Corporation and the Gulf Products Company, I believe is the correct name.

"Q. Have you recollection of conversation with any employee of the Gulf Oil Corporation prior to the date of this telegram, which is April 12, 1947, at which time you discussed the matters which are contained in the wire itself?

"A. Well"—— [29]

Mr. Scofield: Mr. Caughey then stated. "Either some or all, is that your question," and my answer was: "Some or all."

"A. Let's get it clear. The wire happened at one date, these interviews you are asking about occurred at a prior date. Obviously they cannot be related.

"Q. You have already indicated that you made two trips to Pittsburgh subsequent to the wire?

"A. That is true.

"Q. At which time you discussed with Gulf Oil Company employees the matters contained in the wire. Now, did you discuss these matters at any time with the employees of Gulf Oil prior to the wire?"

Mr. Caughey then said: "And which is dated April 12, 1947."

"The Witness: The wire had not been written when discussions were had with Gulf Research employees, so I repeat to you the wire dated and made up in April cannot have been in existence at a prior date."

Mr. Scofield: Then Mr. Caughey stated: "No,

(Deposition of Kenneth A. Wright.)

Mr. Wright, he is asking you whether you discussed matters in the wire, not the wire itself, the matters covered in the wire, any or all of them."

"The Witness: I talked with Mr. Teplitz [30] in Houston in the year 1946, I believe, on several occasions, and on one of those occasions I told Mr. Teplitz that we had a patented method, and that we believed Mr. Hall had no rights under the patented method.

"Q. About when was that in 1946?

"A. About June of 1946, is my best recollection.

"Q. Is that all you recall of the meetings with Teplitz in 1946?

"A. I endeavored to have him use our equipment on—in the cementing of Gulf Oil Company's wells, and made diligent efforts to sell my equipment.

"Q. And did you tell Mr. Teplitz that Hall had no rights under the Wright patents?

"A. I said, 'I am of the opinion that Hall does not have rights under the Wright method patent.'

"Q. Now, on the occasion of this trip to Pittsburgh in June of 1947 who did you see in Pittsburgh?

"A. Our interview was with a Mr. Blaine Westcott, a Mr. Volmer, a Mr. Kennedy and Mr. A. J. Teplitz.

"Q. Is that Teplitz spelled T-e-p-l-i-t-z?

"A. I believe that is correct.

"Q. Were you accompanied by anybody on this trip in June, 1947?

"A. Mr. Bruce Barkis accompanied me. [31]

(Deposition of Kenneth A. Wright.)

"Q. Recount your recollection of the conversations which you had with these four gentlemen in Pittsburgh.

"A. We made diligent sales efforts to sell our equipment, and asked them to test it in the same manner as they had made tests on the wells of their own where they had used Weatherford equipment. We cited the fact that in our opinion Hall was an infringer of the method device—method patent, and we thought the Gulf Oil Company was not acting in complete fairness by specifying one particular manufacturer's equipment without trying others. We cited to them that the apparatus patent of K. A. Wright that was owned by B & W had broad claims in it and that under those claims even a wide variance of scratcher designs could be constructed and that if they had suggested changes, why, we would entertain discussion with them and said that we would—we were particularly anxious to be permitted to bid on the business which we understood was going to be consummated for South American use, principally in Venezuela, as far as our information went."

Mr. Scofield: Now, skipping a page to page 93 and in the middle of the page:

"Q. At this meeting in Pittsburgh in June, 1947, did you make any representations as to Hall's rights under [32] the September 15, 1944, agreement, Plaintiff's Exhibit 34?"

Mr. Subkow: The answer to that question appears on page 94, Mr. Scofield.

(Deposition of Kenneth A. Wright.)

Mr. Scofield: Yes, page 94 near the bottom the witness answered finally.

Mr. L. E. Lyon: Now, wait a minute.

Mr. Scofield: There is some colloquy between counsel there, your Honor. I have omitted it. If you want it in, we will put it in, but the answer appears on the following page near the bottom.

Mr. Subkow: May I read, Mr. Lyon?

The Court: Do you agree that the answer begins at the bottom of the following page?

Mr. L. E. Lyon: Your Honor, there is a great deal of explanatory work in between.

The Court: In case of doubt we will take time to read it, gentlemen.

Mr. L. E. Lyon: It is explanatory to the witness' answer.

Mr. Scofield: Do you want it read? We will read it if you want it read. Read the answer.

Mr. Subkow: "A. I believe I have answered that, Mr. Scofield.

"Q. I don't recall. Would you answer it again?

"A. I will have Mr. McClure read: read [33] the reply."

Mr. Scofield: Then Mr. Caughey said: "Read the previous reply."

> "(The reporter read the answer as follows: 'That the contract was an instrument on file in Washington, and such was a public document for anyone to read that wanted to, and that we would like to call their attention to it, and I believe that a letter to Mr. Teplitz, writ-

ten in probably midyear, 1936—1946, made reference to this same—made reference to this contract.')"

Then a question by me:

"Q. Your previous answer has been read, and there is no indication in that answer that you discussed Hall's rights under this contract. I am now asking: Did you make any representations to this group with regard to Hall's rights under the contract?"

Then Mr. Caughey said:

"Well, now, just a second. I don't agree with your statement preceding your specific question, because if you will read that answer it does say something about representations as to the contract."

Then I said:

"I know, but it does not say a thing, his answer does not make any statement as to whether Hall's right [34] had been discussed, and I am asking him that now."

Then Mr. Caughey said: "All right, he may answer."

And then his answer appears.

Mr. Subkow: "The Witness: We stated to the Gulf Oil Company—that is, the Gulf Research and Development Company, that in our opinion Mr. Hall had no rights under the B & W method whatsoever, and that if he did not, well, then, he would be an infringer, in our opinion."

Mr. Scofield: Now skip to page 97. And this testimony, your Honor, has to do with the protests

(Deposition of Kenneth A. Wright.)

that were made by Mr. Wright and Mr. Decker, Mr. Wright's attorney, during a trip that they made to Pittsburgh in October and November of 1947:

"Q. On this second trip that you made in October, 1947, what was the occasion of that trip?

"A. I call to your attention you said, 'October,' and I said I believe it was either October or November.

"Q. Well, I will accept your correction." [35]

* * *

Mr. Subkow: "The Witness: The occasion of the trip, and I am rather in doubt as to how broad your word 'occasion' might cover.

"Q. You substitute any word that is satisfactory to yourself. What I want to know is why you went down there?

"A. My trip to Pittsburgh in October or November of '47 was to interview and to have consultation with A. N. Houghton regarding the patent problems and situations between B & W and the Gulf Oil Corporation, and I was accompanied by an attorney by the name of Harold Decker.

"Q. Anybody else? A. No.

"Q. Well, now, give me the substance of that meeting with Mr. Houghton. First, state was there anybody besides Mr. Houghton you discussed these matters with?

"A. The conference was held in the Law Library of the Gulf Oil Corporation in the Gulf Building in Pittsburgh, and there were present Mr. A. N.

(Deposition of Kenneth A. Wright.)
Houghton, Mr. Blaine Westcott and Mr. Volmer, Mr. Decker and [36] myself." [37]

* * *

Mr. Scofield: "Q. Give me the substance of that meeting with Mr. Houghton. First, state was there anybody besides Mr. Houghton you discussed these matters with?" [38]

* * *

Mr. Scofield: "Anybody else?" You said, "No."
Mr. Subkow: "No." That is right. [39]

* * *

"Q. Give me the substance of that meeting.
"A. We, Mr. Decker acting as my attorney——
"Q. Is he a patent attorney?"
Mr. Caughey said, "No."
Mr. Subkow (Reading): "The Witness: I do not believe he is. Mr. Decker, one of the attorneys employed by the firm of B & W, stated that he was there to discuss the over-all merits of our patent situation as far as obtaining—strike 'obtaining'—as far as the relationship of the Gulf Oil Company and the use of the B & W method."
Mr. Scofield: And then Mr. Caughey said: "Read that answer," and the answer was read.
Then Mr. Caughey said: "What date is this now?"
My answer was: "October and November, 1947."
Mr. Subkow (Reading): "The Witness: Mr. Decker stated that he believed the Gulf Oil Company's use of the Hall device was an infringement on our method, and that we believed we should have

(Deposition of Kenneth A. Wright.)

a thorough discussion of it, and that we didn't want to approach the Gulf Oil Company in any threatening manner of any nature, and were there to see if we couldn't clarify the issues, and from there lead towards obtaining business for the firm of B & W, [40] in the Gulf Oil Company buying their equipment. I believe he stated that the firm of B & W had placed J. E. Hall and the Weatherford Spring Company upon notices of infringement, and that those were the only notices of infringement that had been sent out by the firm of B & W. And Mr. Houghton—correction, Mr. Wright, with the two parties present, reviewed the history of the development of the scratcher and the method of the party Wright, and Wright pointed to the early history of the development, going back as far as the Jones report, and the conference ended on the second day with an understanding that some legal points as far as—to do with claims were being legally, or let us say correctly related to parts of the Hall application; and going back into the start of the second day, Mr. Houghton said he had 'phoned you, I believe, and had obtained some"——

Mr. Scofield: Then skipping to page 110——

Mr. L. E. Lyon: Wait a minute. Let us read the next answer.

Mr. Scofield: ——or 102.

Mr. L. E. Lyon: Just so the record will be clear as to whom Mr. Houghton 'phoned.

Mr. Scofield (Reading): "Mr. Caughey: When you say 'you,' you mean Mr. [41] Scofield?"

(Deposition of Kenneth A. Wright.)

And then the witness answered: "That is correct."

Mr. Subkow (Reading): "The Witness: That is correct. I believe that is what he said, and that you had made some representation to him, and the conference ended on the late afternoon of the second day, with the general understanding that B & W would make an effort to get the particular point that Mr. Houghton requested clarified, so that he might feel completely free to make recommendations to his employer; and it was our understanding that we would make an effort to do—to comply with that request, whereupon Decker and Wright returned to Los Angeles."

The Court: Was your request met, Mr. Lyon?

Mr. L. E. Lyon: Yes, your Honor.

Mr. Scofield: Now, to page 102, about five lines down:

"Q. And you told Mr. Teplitz that the Gulf Oil in the use of the Hall equipment was infringing your process and apparatus patents?

"A. I did not make that statement.

"Q. What statement did you make?

"A. I said that in my opinion Hall was not licensed under the B & W method, and therefore had no rights under it. [42]

"Q. And did you tell this group in October and November of 1947 the same thing?

"A. Essentially so.

"Q. Did Mr. Decker make any representations

(Deposition of Kenneth A. Wright.)

to the group with respect to what the patents covered, do you recall?

"A. He stated what he believed it covered in his—with his knowledge, and stating that he did not attempt to qualify as an expert.

"Q. Now, state for the record your recollection of what Decker told the group the patents covered.

"A. Decker said that he believed that Mr. Wright understood thoroughly the patents that were being discussed, and as far as he was able to see, from his experience and discussion with me, that it appeared to him that the Gulf Oil Company was using the B & W method along with the Hall devices.

"Q. Well, Decker's representations to the group were solely with respect to the matter of infringements. He did not attempt to describe what the patents covered; is that correct?

"A. I think I have covered everything in that statement, Mr. Scofield.

"Q. Please answer that last question of mine.

"A. Please read the question over. [43]

"(The question was read by the reporter.)

"The Witness: Mr. Decker said he was general counsel for the B & W and was there to discuss with them, as I stated before, in a peaceful discussion, without threat of any nature, the use by the Gulf Oil Company of the B & W method, and with the interest in view of obtaining the business of the Gulf Oil Company in buying B & W equipment.

(Deposition of Kenneth A. Wright.)

"Q. Did Houghton doubt whether Gulf was infringing these patents by use of Hall equipment?

"A. Mr. Houghton doubted, as far as my recollection goes, and under my understanding of his remarks, that the Gulf's use of the Hall device was of a nature that made them liable if a notice of infringement would be served upon them."

Mr. Scofield: Then I asked the reporter to read the answer and the answer was read. The next question:

"Q. Do you mean by that previous answer that Houghton doubted that Gulf's use of Hall's equipment infringed, or that he thought that the use of Hall's equipment did infringe?

"A. By way of clarification of the previous answer, my understanding of Mr. Houghton's statement was that the Hall device then being purchased and used by them placed them in a position where they might be [44] eventually termed an infringer.

"Q. Then Houghton did not doubt that if Gulf used Hall's equipment that Gulf infringed?

"A. You are compounding things, Mr. Scofield. I said, 'By way of clarification,' because upon the rereading of my answer it did not become clear what my answer was intended to be, and so, by way of clarification, I made that statement.

"Q. What I am trying to find out now is whether Houghton doubted Gulf infringed or whether he was convinced that Gulf did infringe?

"A. And my clarification then answers your statement.

(Deposition of Kenneth A. Wright.)

"Q. No, it does not. I have not yet found out what was Houghton's view of Gulf's use of Hall's equipment.

"A. Mr. Houghton, at the end of the second day, so far as I am able to understand, his statement indicated that he felt that the use of the Hall device, and its use with the method which we claimed was the B & W method, placed the Gulf Oil Company in a position where they eventually might be termed an infringer."

The Court: Have you about reached a stopping point?

Mr. Scofield: I have just one more question and answer, if I may, your Honor: [45]

"Q. Then Houghton thought they might infringe?

"A. As I stated, they might eventually be termed or determined to be an infringer."

* * *

Mr. Scofield: Beginning on the third line of page 110:

"Q. Did you ever have any conversations with anyone connected with the Standard Oil Company of California with respect to the settlement agreement of September 15, 1944, Plaintiff's Exhibit 34?

"A. Mr. Barkis and myself had a conversation with Mr. Jules Toussaint one afternoon, and I believe Mr. Barkis handed Mr. Toussaint a folder containing a letter, and I believe it was similar in many respects to that which B & W supplied the Shell Company.

(Deposition of Kenneth A. Wright.)

"Q. When was that, about?

"A. I believe the letter speaks for itself, if it is a part of this record.

"Q. I show you a letter dated May 21, 1947, addressed to Mr. J. E. Toussaint, and evidently signed by Mr. Bruce Barkis, as indicated by the copy, to which is attached a third sheet, upon which is a tabulation. Can you identify that as the letter you [46] referred to in your previous answer?

"A. It is."

Mr. Scofield: I then requested the reporter to mark the two-page letter and the third sheet attached to the letter as Plaintiff's Exhibit 44 for identification. That, your Honor, is in evidence at the present time.

The Court: Does that conclude the use of the Wright deposition at this juncture?

Mr. Scofield: Yes, sir. [47]

* * *

DEPOSITION OF ALFRED M. HOUGHTON

"Q. Please state your name.

"A. Alfred M. Houghton.

"Q. Where do you reside?

"A. Washington, D. C. Do you want my home address? [53]

"Q. Yes, if you will.

"A. 4929 Glenbrook Road, Northwest, Washington, D. C.

"Q. What is your occupation?

"A. I am a lawyer.

(Deposition of Alfred M. Houghton.)

"Q. By whom are you employed?

"A. Gulf Oil Corporation.

"Q. How long have you been employed as lawyer for Gulf?

"A. Since approximately 1914 on a retainer as patent counsel, and since January, 1944, on a salary with them as general patent counsel of the company.

"Q. You have indicated that your work is specialized practice, that is, patent work?

"A. Yes, patent, trade-mark and unfair competition law.

"Q. Were you subpoenaed to give your deposition here, or is it given voluntarily?

"A. When you advised me that you would like to take my deposition, I stated that since I did not want to testify for or against either party, I would rather be subpoenaed.

"Then, when you said you were arranging to have the subpoena issued, I told you I would not put you to that trouble, but would appear voluntarily." [54]

Mr. Scofield: I am then skipping the colloquy of counsel in the middle of the page.

"Q. There is pending in California and in Houston, Texas, litigation involving Jesse E. Hall, and the Weatherford Oil Tool Company, on the one hand, and B. & W., Inc., and Mr. Wright and Mr. Barkis, on the other.

"In these cases it was believed—it was first believed that it would be helpful to the court in the

(Deposition of Alfred M. Houghton.)

respective cases in deciding the issues, to have evidence, oral and documentary, of meetings that took place and, perhaps, correspondence and reports, other contemporaneous papers, that might give an accurate insight into what took place with regard to the activities of the parties involved in this litigation.

"Mr. Houghton, there is evidence in the California case in the form of a wire, Plaintiff's Exhibit 19, which was a telegram sent by Mr. Bruce Barkis, of B. & W., to the Gulf Oil Corporation, which bears your date stamp of April 12, 1947, and I put the exhibit before you, and ask you whether or not you are familiar with that wire?

"A. I am familiar with it, but it was not sent to me. The date stamp appearing on what appears to be a copy, must be a date stamp of the copy which was [55] sent to me.

"Q. Did you receive a copy of that wire?

"A. I did on the date shown there, April 12, 1947.

"Q. What was done by you as a result of the receipt of that wire? You might state first from whom it was received.

"A. The copy of the telegram in question was sent to me by Dr. Paul D. Foote, who was vice-president of Gulf Research and Development Company, with a letter of April 11, 1947.

"Q. Would you care to read that letter into the record, giving the name of the addressee, and who signed the letter, the date of the letter, and its con-

(Deposition of Alfred M. Houghton.)

tents? Would you care to read that letter into the record? [56]

"A. I would not mind reading the parts which refer to the telegram, but it seems to me that other parts of the letter are in the nature of a confidential communication between a lawyer and his client.

"Q. Well, you can use your judgment as to that, Mr. Houghton, if you care to.

"A. The only parts that I would leave out are those referring to our operations, and matters which appear to me would be immaterial here.

"Q. Well, would you read into the record portions of the letter that have to do with this wire, Plaintiff's Exhibit 19?

"A. Yes. The letter is as follows, with the exception of a few parts omitted.

"Q. Is this letter addressed to you?

"A. I am going to give you the whole heading and all:

" 'Post Office Drawer 2038, Pittsburgh 30, Pennsylvania, April 11, 1947. Mr. A. M. Houghton, Munsey Building, Washington 4, D. C. Subject: Improvements in casing cement.'

"Now, I am omitting our file number. The [57] letter then goes on:

" 'Dear Sir:

" 'For approximately one year, beginning October, 1945, A. J. Teplitz of this laboratory was assigned to the Houston office for the purpose of conducting an extensive study of primary, casing

(Deposition of Alfred M. Houghton.)

cementing operation. This work was done in cooperation with, and under the supervision of, the Houston office. In the latter stages of the project, Mr. J. E. Hall, owner of the Weatherford Spring Company, Weatherford, Texas, participated quite extensively.'

"I am now omitting a paragraph giving his opinion as to the results of this assignment. I am not omitting a paragraph or a portion of it referring to a copy of a report which was sent to me with the letter. I will now proceed with the letter:

" 'All of the work done to date indicates that the scratchers and centralizers manufactured by the Weatherford Spring Company are the best equipment for use in the new cementing method, and large orders have been placed with this company for the equipment needed in the states, Venezuela and Kuwait. Mr. Hall, owner [58] of the Weatherford Spring Company, has U. S. Patent No. 2,374,-317 on his scratcher, and U. S. Patents 2,220,237 and 2,258,052 on his spiral centralizer. A 12-page ad on Weatherford products appeared in the Oil Weekly for February 10, 1947.

" 'B. & W., Inc., 3545 Cedar Avenue, Long Beach, California, owned by Mr. Bruce Barkis and Mr. Kenneth Wright, also produce a scratcher that we consider inferior to the Weatherford scratcher. As far as we know the B. & W. scratcher and methods of using it are covered only by U. S. Patents 2,338,372, 2,374,317 and 2,392,352 issued to Kenneth

(Deposition of Alfred M. Houghton.)

A. Wright. We have been given to understand by Mr. Hall that he has a royalty agreement with B. & W. which permits him to manufacture and sell the Weatherford scratcher. Mr. Hall has also intimated that he is applying for a patent on the above-described casing cementing method involving the use of Weatherford equipment but we have not yet ascertained what he considers patentable in the method. There is considerable doubt in our minds that a patent can be secured inasmuch as the method is simply a combination of [59] three elements, all of which have been used in the past, either singly or in combination of two of the elements.

" 'We are attaching a copy of a telegram just received from Mr. Bruce Barkis of B. & W., Inc., in which it is stated that the new cementing method duplicates the patented B. & W. method, as outlined to Mr. Teplitz by Mr. Wright of B. & W. prior to our field investigation. It is further stated that the Weatherford method is an infringement of the B. & W. method. Mr. Barkis requests an interview with us concerning this entire matter before we place large orders for Weatherford equipment to be used in Venezuela. We seriously doubt that Mr. Wright outlined to Mr. Teplitz the complete method now being used by us, and do not think that the Wright patents bear on the method.

" 'At your very earliest convenience we would like to have an opinion on the following:

" '(1) In practicing the new casing cementing

(Deposition of Alfred M. Houghton.)

method described in our reports, is there any infringement of the B. & W. patents listed above or any other patents pertinent to the subject?

"'(2) How shall we reply to the Barkis [60] telegram? An early answer seems indicated.

"'(3) In the event that foreign patents have not been issued on scratchers and centralizers, and the use of centralizers, scratchers and reciprocation of casing, should Gulf file applications for suitable foreign coverage as quickly as possible? We understand that inventorship is not a prerequisite for a Venezuelan patent.

"'The new casing cementing method is proving to be highly successful particularly in Venezuela, and probably will be equally so in Kuwait; therefore, we wish to avoid any limitations that will prevent free use of the method in any of our operations.

"'Mr. Hall and Mr. Teplitz will probably be back in the States by May 1st. In the meantime we are writing Teplitz by air mail requesting a clear statement of his dealings with Mr. Wright, and instructing him not to discuss the present situation with Mr. Hall. This seems advisable to avoid possibly unnecessary complications.

"'Yours very truly,

"'PAUL D. FOOTE. [61]

* * *

"'CC: Mr. A. M. Houghton, Pittsburgh Office'—which means that a copy was sent to the office I maintain in Pittsburgh."

Mr. L. E. Lyon: Your Honor, with respect to that portion of this deposition we would like to move to strike the statements of opinion of the writer of that letter with respect to patents in question, or the question of infringement or non-infringement that are stated in the letter, as obviously incompetent, irrelevant and immaterial to any issue in this case, and particularly as hearsay as far as this case is concerned.

Mr. Scofield: I think your Honor is entitled to the views of the patent attorney for the Gulf Oil Company with regard to these patents, not that they will be influential, but he was asked there about whether or not he had knowledge of these patents——

Mr. L. E. Lyon: Mr. Scofield, pardon me.

Mr. Scofield: ——and he gave as his voluntary statement what the Gulf Oil Company considered with respect to these patents.

Now, I do not see why a deposition which he gives should be inadmissible for the reason—that is, it does not mean that you have to find that these patents are valid or invalid, [62] but it certainly is a knowledge to you as to what these companies, the patent attorneys of these companies, are thinking about these patents as they are submitted to them.

Mr. L. E. Lyon: I think Mr. Scofield misses the point entirely in that the letter was not written by Mr. Houghton but was written by Mr. Paul A. Foote. Who he is I do not know, except that he is in charge of the research department of the

Gulf Oil Company. He is not an attorney or a patent lawyer as far as I know. And his expressions of opinion set forth in this letter do not even rise to the dignity of what Mr. Scofield is talking about. He is a layman.

The Court: Is the state of mind of the Gulf of any consequence here?

Mr. Scofield: It is important here, your Honor, indeed it is.

The Court: How is it material?

Mr. Scofield: It is material for this reason: This wire which is in evidence as Plaintiff's Exhibit 19 is the wire in which Mr. Barkis said that they were infringing certain of these Wright patents. Now, that is in evidence. They went down there and talked to these people——

The Court: Who is "they"?

Mr. Scofield: That is Barkis and Wright. At that time we had the Gulf business, and you can get from Mr. Foote's letter here just what they thought of this equipment. [63]

The Court: Is it relevant to the issue as to why the Gulf concern did what they did?

Mr. Scofield: Did what?

The Court: Why they did what they did with respect to buying these scratchers?

Mr. Scofield: I think it is relevant to the Gulf's state of mind as to what this threat meant to them; that is, they were threatened by this wire with the infringement of these Wright patents, and in this letter from Foote to Houghton, Foote is giving his

views with regard to what the Wright patents stood for.

Now, later in this deposition, you will find what Houghton's ideas were with regard to these same patents.

The Court: Is it the issue here why the Gulf Company did what it did in any particular?

Mr. Scofield: The issue here, your Honor, is whether Gulf thought that they were being charged with infringement.

The Court: By whom?

Mr. Scofield: That is by B. & W.

The Court: How is that in issue here?

Mr. Scofield: Because that is the protest that we are objecting to. Here these two parties, Hall and Wright, had a contract.

The Court: What does plaintiff claim was the consequence of what you call the protest? [64]

Mr. Scofield: The consequence of the protest is they breached the contract by making the protest.

The Court: Not if the protest just went off in thin air.

Mr. Scofield: That is so. But did it go off in thin air?

The Court: I do not know. I am asking you what the plaintiff contends?

Mr. Scofield: The plaintiff contends that on the receipt of this protest, on receipt of this charge of infringement, that the Gulf Oil Company then acted upon that and they decided whether or not they were going to use the B. & W. equipment.

The Court: What do the plaintiffs contend they did about it?

Mr. Scofield: The plaintiff contends upon receipt of this charge of infringement that they constantly brought that matter up to us.

The Court: But conversation does not damage anybody.

Mr. Scofield: Oh, they shared in the business from then on. They were not doing anything with Gulf up to this time.

The Court: All right; tell me about it. What do you contend that the Gulf Company did it would not have done otherwise? [65]

Mr. Scofield: I contend this, your Honor: I contend that upon receipt of this wire and subsequently thereto up to this present time that they then gave B & W a part of this business that we had ourselves.

The Court: Can we get down to that this way: Does the plaintiff contend that the Gulf Company changed its method of doing business as a result of this? Is that the plaintiff's contention?

Mr. Scofield: Plaintiff's contention is they changed their method in this regard: That they then gave B & W part of this business that we had alone before that. That is how we were damaged.

The Court: Plaintiff contends that before these incidents the plaintiff had all the business, is that it?

Mr. Scofield: That is right.

The Court: And after these incidents and as the proximate consequence of these incidents it lost a part of the business to B & W, is that it?

Mr. Scofield: That is it, and exactly that breach of paragraph 3 which says that we are to have the exclusive right in this type of scratcher.

Mr. L. E. Lyon: Your Honor, if we look at the pleadings of the plaintiff in this action, plaintiff contends that the contract was breached before August of 1946, at which time the plaintiff stopped paying any further royalties under the [66] contract and said the contract has been rescinded.

Now, this is all testimony about something that happened a year or more after 1946, at a time when they are not paying royalties, at a time when they maintain that the contract was breached.

I do not see how it can be possibly material at all. And under the plaintiff's pleadings the plaintiff pleads that the contract was breached before August of 1946. Then after the 30th of June, 1936 (1946), they quit paying royalties because the contract was rescinded.

The Court: '46.

Mr. L. E. Lyon: '46. Now, this is action that took place in '47. Their statement with respect to the defendants getting business from the Gulf Oil Company, the defendant did no business with the Gulf Company until 1949.

The Court: All right. What is the date at which the defendants contend plaintiff breached this agreement?

Mr. L. E. Lyon: As of November 6th or 8th, 1945. The first of August of 1946, or June 30th, 1946, when they quit paying royalties, as a second step in their rescission of the contract.

Mr. Scofield: May I remind Mr. Lyon that he has evidently forgotten Mr. Wright's deposition of this morning?

Mr. L. E. Lyon: No, I haven't.

Mr. Scofield: Mr. Wright said in that deposition that [67] he talked to Teplitz in 1946 and Teplitz there considered that he was charging the Gulf then with infringement. That is before this wire. So even his own——

Mr. L. E. Lyon: Mr. Houghton further, in his deposition, testified that to his knowledge no threat was ever made against the Gulf Company of infringement at any time, if you want to go into that.

Mr. Scofield: We will prove that——

The Court: Just a moment, gentlemen. Address your remarks to the court and one at a time.

Mr. Lyon, as I understand, the defendants contend plaintiff committed a material breach of the September 15, 1944, contract as early as 1945, is that it?

Mr. L. E. Lyon: As early as November 6th or 8th, 1945.

The Court: Do the defendants contend that at that time they had a cause of action to cancel the contract, to treat it as at an end?

Mr. L. E. Lyon: At that time, your Honor, yes, it was at that time. However, it was not until April or May of 1946 that the defendant learned of that breach, that breach being the abandonment of the 38,891 application before the United States Patent Office without notice to defendants as required

under provisions of paragraph 6 of the agreement of September 15, 1944.

Now, we contend that that breach was carried forward by [68] the refusal to pay royalty after June 30, 1946.

The Court: Very well. At least as early as June, 1946, both sides contend that the other had committed a material breach of the agreement.

Is it your contention, Mr. Lyon, that nothing that happened after that is material?

Mr. L. E. Lyon: If the contract was canceled—I mean was breached and rescinded, what under the construction of the contract can be material as to what happened after that?

The Court: Very well. Then under that view we will have to stop at least as early as June, 1946, under both theories, won't we?

Mr. L. E. Lyon: Under their theory of rescission, yes.

The Court: What do you say to that, Mr. Scofield?

Mr. Scofield: I say that if you are going to determine the date of the contract at this time, then, of course, any evidence after that date is inadmissible.

The Court: It might be admissible on the issue——

Mr. Scofield: It would not be pertinent.

The Court: It might be admissible as to the provisions of the contract?

Mr. Scofield: That is right.

The Court: The conduct of the parties under the

contract might be relevant to the issue as to the meaning of the provisions of the contract? [69]

Mr. Scofield: Yes.

The Court: But on the question of damages for the breach under either theory, now, as I understand it, if the court must declare a cancellation, the parties have stipulated that that is their desire, and the only question as to when——

Mr. Scofield: That is right.

The Court: ——is the question as to who committed the first material breach and when was it committed?

Mr. Scofield: That is right.

The Court: Now, you are both, as I understand it, contending that at least as early as June, 1946, the other had committed a material breach which would warrant cancellation?

Mr. Scofield: Yes.

The Court: Is anything relevant to the issue of damages subsequent to that?

Mr. Scofield: No. But, of course, we have no assurance as to when you are going to decide that the breach was actually performed; that is, we have got to put in our evidence and you then are going to determine just who breached and when. So that, proceeding for the plaintiff, I have got to put in such evidence as I think will establish that they breached the contract at a certain time, and if not at that time, then one of these subsequent breaches.

The Court: Then it is your view, as I understand it, that the court, notwithstanding the position of the parties, might [70] conceivably determine that

numerous breaches were committed between September 15, 1944, and to date?

Mr. Scofield: No. I have no way of knowing, of course that.

The Court: But that the court might determine the first material breach warranting a cancellation was committed in 30 days.

Mr. Scofield: That is right. You might even decide that we breached the contract here in 1945, or you might decide that they breached the contract in 1946, when Wright talked to Teplitz, or you might decide that they breached the contract when Barkis sent this wire in1947. Those are all things, all proofs that have been made in the case, that will be made in the case. Some of them have already been made, but they all go to this question of when this breach actually occurred and whether it is our breach or theirs. They will have their day in court to decide when we breached the contract and we now are attempting to show you when and how they breached the contract.

Mr. L. E. Lyon: Your Honor, the specific objection that I make to this letter is as an expression of opinion with respect to the validity or non-validity or with respect to infringement or non-infringement of the patent.

The Court: Of course, it would not be competent as opinion evidence, as such. It might be competent to show a [71] state of mind. [72]

* * *

The Court: Are you agreed on this, that one or the other party did commit a material breach which would warrant cancellation at least as early as June, 1946?

Mr. Scofield: Certainly, as far as my contention is.

Mr. L. E. Lyon: Yes, your Honor.

The Court: Of what materiality is it that one party pirates the customers of the other after June of 1946? It is irrelevant, their conduct, unless it shows their conduct under the agreement in such a way as to aid in interpretation of the agreement.

Mr. Scofield: It would do that and also it would bear upon damages.

The Court: Damages?

Mr. Scofield: Yes.

The Court: How would it bear upon damages?

Mr. Scofield: Well, it may be a little far-fetched, so I will withdraw that. [75]

The Court: In other words, it would throw the decree or the cancellation of the agreement at least as early as June of 1946. That means that the court——

Mr. Scofield: And rescind it as of that date.

The Court: ——must put the parties, as nearly as possible——

Mr. Scofield: Back.

The Court: ——in the position they were in at the time the agreement was made.

Mr. Scofield: That is correct.

The Court: And compensate the innocent party to the extent that that is possible.

Mr. Scofield: That is correct. [76]

The Court: So that can all be done as far back as the end of June, 1946.

Mr. Scofield: That is right, but when we started to read this deposition I had no assurance then, nor do now, that you will decide it was breached by either party as early as 1946.

The Court: I understand you stipulated that one party or the other did commit a material breach which would warrant cancellation of the contract as early as June of 1946.

Mr. Scofield: I did not understand that stipulation this morning. That is, I understood we were entering into a stipulation that one or the other breached, but the time I did not understand was fixed according to the stipulation.

The Court: Let us be clear about it. As far as intending to recite the respective contentions, we do not need to recite those.

Mr. Scofield: No, sir.

The Court: Now, the question is, since the plaintiff contends that the defendants committed such a breach prior to the end of June, 1946, and the defendants contend that the plaintiff committed such a material breach as early as June, 1946, can you agree, at all events, one party or the other did commit such material breach to warrant the cancellation of the agreement at least as early as June, 1946?

Mr. Scofield: Well, I can agree that if you accept this contention of ours, then certainly there was a breach as early [77] as June, 1946.

The Court: That will not help us very much. In

other words, if the plaintiff wins, you will so agree, but that isn't what I asked you.

Mr. Scofield: No, but I will go further than that, if you decide that our breach was prior to the defendants' breach and it was as early as June, 1946, then your stipulation is in order.

The Court: I don't understand it. I will deny the motion. I will hear the evidence and ask that the parties rely on the presumption which each indulges, and the court considers only competent evidence in determining the issues.

Mr. L. E. Lyon: Your Honor, I think the record is somewhat in a garbled situation at the present time, because I understood the stipulation to be, a minute ago, that it was stipulated that there was a material breach by one or the other party as early as the end of June, 1946.

The Court: Well, Mr. Scofield says he did not understand it that way.

Mr. Scofield: When we came here this morning, I——

Mr. L. E. Lyon: Do you or do you not understand it that way?

Mr. Scofield: Well, I understand—that there was a material breach as far as the plaintiff was concerned, certainly that I am not going to stipulate to. [78]

The Court: Well, that is your contention. There is no question but what the plaintiff contends that the defendant committed a breach as early as June, 1946, and there is no question but what the defend-

ant contends that the plaintiff committed a breach as early as June, 1946.

Mr. Scofield: That is right.

The Court: My question is, can you stipulate, at all events, that one party or the other did commit such material breach as early as the end of June, 1946?

Mr. Scofield: Well, how can I stipulate here that we breached it prior to June, 1946?

The Court: The question is, and you gentlemen are presumed to know the facts, can we know in advance that the parties are agreed that if any material breach did occur to warrant cancellation of the contract, regardless of who committed it, that it was committed at least as early as the end of June, 1946? If you can't agree upon that, then we will proceed accordingly.

Mr. Scofield: I thought we agreed this morning that there was a breach of this contract by either one or the other and that both parties had come here in 1951 requesting cancellation, based upon what each one thought was a breach of the contract.

The Court: Mr. Scofield, there is no question about the contentions of the parties. Each party contends that the [79] other committed the breach in question as early as the end of June, 1946.

Now, I am asking you the third question: Each of you contending that the other committed a material breach warranting cancellation as early as the end of June, 1946, can it be agreed that one party or the other did commit a material breach to warrant cancellation of the contract prior to the end of June,

1946, and leave it to the evidence to show and for the court to determine which party did commit the material breach?

Mr. Scofield: I will go along with that a hundred per cent, except in so far as the breach by either plaintiff or defendant is concerned, your Honor will fix that date and specify what the breach was, that is, when the evidence is in. That is, at this time I don't see how I can stipulate that there was a breach in June of 1946, either by one or the other. We may make proofs that there wasn't a breach until this Gulf of 1947. They may not make proof that may establish that there was no breach at all.

The Court: Let us proceed. As I understand, there is no stipulation as to what I referred to.

* * *

DEPOSITION OF ALFRED M. HOUGHTON
(Continued)

"Q. Now, was this telegram which has been offered [80] as Plaintiff's Exhibit 19 in the California suit attached to this letter?

"A. No, a copy of it was attached."

Mr. Scofield: Then skip over to the top of page 10.

Mr. Subkow (Reading): "A. The copy of the telegram which I received April 12, 1947, seems to be in practically all respects a duplicate of Plaintiff's Exhibit 19 to which you refer, but the exhibit appears to be a photostat, and it is not a photo-

(Deposition of Alfred M. Houghton.)

stat of my copy, although it bears at the top the following:

" 'Rec'd April 12, 1947, A. M. Houghton.'

"My date stamp appearing on my copy merely says:

" 'Received April 12, 1947, A. M. Houghton, Ref'd to'——

so I am at a loss to understand this photostat bearing my office stamp which does not conform to the office stamp of my copy. Obviously the photostat is taken either from the original telegram or a copy of it, and if taken from the original telegram I do not quite understand how it could bear my office stamp of April 12, 1947." [81]

* * *

"Q. Except as to the differences you have noted, the wires are the same? A. Yes."

Mr. Scofield: Skipping down to the bottom of the page:

"Q. Did you give the date of the letter from which you have read, which, I believe, was from Dr. Foote to you?

"A. I do not remember, but it is dated April 11, 1947, and I received it April 12, 1947, the same day I received a copy of the telegram which has just been referred to.

"I might say that what you refer to as a letter and what I apparently have referred to as a letter is a memorandum, since it is not on the letterhead of Gulf Research and Development Company. [82]

"Q. On receipt of this memorandum from Dr. Foote, what did you do, if anything, and I am not

(Deposition of Alfred M. Houghton.)

now interested in any confidential report that you made to Gulf, but I would like to have you state, if you will, what you actually did upon receipt of the letter; that is, what actions you took, if any?

"A. This letter is very much in line with a number of inquiries I receive constantly from Gulf Research and Development Company.

"It referred to a matter which was entirely new to me and, naturally, I studied it and considered it, and then on April 14, 1947, I acknowledged it by a letter to Dr. Paul D. Foote, Gulf Research and Development Company, Post Office Drawer 2038, Pittsburgh, Pennsylvania.

" 'Dear Sir: Re Casing cementing.' "

I now omit our file numbers. This letter is as follows:

" 'This is to acknowledge receipt of your letter of April 11, 1947, relative to the assertion of B. & W., Inc., Long Beach, California, that the technique developed by Mr. A. J. Teplitz for casing cementing and the equipment which is obtainable from Weatherford Spring Company, Weatherford, Texas, infringe certain B. & W., Inc. patents. We have ordered copies of the patents referred to in your letter, and upon receiving [83] them we shall give this matter immediate attention. It is noted on our docket as'—leave that blank.

" 'I suggest that orders for the equipment be deferred until the situation can be appraised and that your reply to Mr. Barkis' telegram advise him that the matter is being investigated by the Patent De-

(Deposition of Alfred M. Houghton.)

partment. We will be in a better position to discuss with B. & W. our cementing problems and necessary equipment and their relation to the B. & W. equipment and method patents when we have had an opportunity to study the patents in question.

" 'For my assistance will you please obtain a statement from Mr. Teplitz of whatever disclosure Mr. Wright made to him, and verify the understanding stated in your letter that Mr. Hall of Weatherford Spring Company is licensed under the B. & W. scratcher patent or patents. If possible, I should like to have a copy of the license agreement, which I imagine Mr. Hall would be willing to give us, in view of the large orders in prospect.

" 'Very truly yours.'

"It is signed 'A. M. Houghton.'

"Q. Did you then obtain copies of these patents, or was an effort made by Gulf Oil, do you know, to obtain copies for you? [84]

"A. Realizing this matter was of importance, I immediately directed my assistants to make a search in the United States Patent Office and locate all patents of Wright and Hall, and in that manner I obtained copies.

"Q. Can you say how soon after this you obtained the copies, and if in the meantime anything else was done by you with respect to this letter or this telegram, Plaintiff's Exhibit 19?

"A. It is my memory that I arranged over the telephone with Dr. Foote or someone in charge, to have Mr. Vollmer of his office, to come to Washing-

(Deposition of Alfred M. Houghton.)

ton and confer with me, as I knew that Mr. Vollmer was very well posted from the technical and engineering standpoint on matters which, it would seem, were involved, or which would seem to be involved in this situation.

"Q. Won't you identify Mr. Vollmer for the record?

"A. Mr. Leslie W. Vollmer who, in association with Dr. Wescott, according to my past experience would be the ones best posted on this subject.

"Q. Is Mr. Vollmer an employee of Gulf Oil or Gulf Research?

"A. I do not know which company directly employs him, but it is my impression that he is employed by [85] Gulf Research and Development Company.

"Q. Had he worked with you in the past in connection with these patent matters?

"A. He had worked with me in the past many times in connection with a large number of patent matters, but not these patent matters.

"Q. You have indicated that Mr. Vollmer came to Washington as a result of this correspondence, have you not?

"A. I don't think I indicated, but he did come here on April 17, 1947.

"Q. Do you recall the discussion which you had with Mr. Vollmer with respect to this wire that had been received from B. & W., Plaintiff's Exhibit 19?

(Deposition of Alfred M. Houghton.)

"A. Yes, I recall it quite in detail.

"I asked Mr. Vollmer to explain to me Gulf's cementing method. I asked him to explain to me the operation of these centralizers and scratchers, and by then we had before us copies of the patents which I thought were germane to the subject, and we discussed those patents somewhat in detail from the standpoint of the technical information, but not necessarily from the standpoint of patents.

"Q. Well, as a result of Mr. Vollmer's visit, do you know whether a reply was made to B. & W.? [86]

"A. I might say that during the visit of Mr. Vollmer to my office on April 17, I requested him to collect pertinent information for future consideration.

"Q. What do you mean by 'pertinent information'?

"A. What information, in addition to what he had available, he could supply, which would assist me in the further study of the matter at hand.

"Q. Was this patent information or information of another character?

"A. I think I asked him to try to dig up further information he could with respect to Mr. Teplitz's operations in Venezuela, and any other information from his files which he thought might be useful to me.

"Q. Do you have any record in the file which you have before you of any reply that was made to B. & W. or Mr. Barkis by Dr. Foote?

"A. Yes, I do. I have before me a copy of a

(Deposition of Alfred M. Houghton.)

letter of April 18, 1947, written to Mr. Bruce Barkis at Long Beach, California, and signed by Dr. Paul D. Foote. It says:

" 'Dear Mr. Barkis:

" 'In reply to your telegram received April 10, 1947, we will be glad to discuss our cementing problems with you, but believe that it is advisable to postpone [87] arranging the requested discussion until Mr. Teplitz of this laboratory returns from Venezuela, which should be early in May.

" 'In the meantime, we shall appreciate being advised of the numbers of your patents which you state are infringed through the use of Weatherford equipment in our operations.

" 'Very truly yours.'

"Q. Who was that signed by?

"A. Dr. Paul D. Foote.

"Q. And the letter was dated April 18, 1947?

"A. It was, and I received a copy on April 24, 1947, as shown by my receipt stamp.

"Mr. Caughey: The defendant makes no objection to the letter, which is a copy.

"Q. (By Mr. Scofield): What steps were taken by you in this regard, and in that connection to refresh your recollection, I call your attention, or put before you, a photostat of a wire dated April 28, 1947, which has been identified and offered in the California case as Plaintiff's Exhibit 18?

"A. Prior to the time of the telegram to which you refer, Mr. Vollmer had evidently found some information which might possibly be useful to me, and

(Deposition of Alfred M. Houghton.)

on April 24, 1947, I received from Dr. Foote copies of early correspondence [88] with B. & W. It included the liber and page of the B. & W.-Hall agreement; but prior to that time, actually on April 17, when Vollmer was here, I had located the Hall and Wright patents, or had them for discussion then, and I had inspected the patent files and the files of interferences in which the applications were involved and, as I recall, there was one application and one patent involved in an interference, and I obtained copies of the B. & W.-Hall agreement from the assignment records in the Patent Office.

"Then, on April 28, 1947, apparently in order to confirm this, I wired you, Mr. Scofield, in substance asking if Hall has a license under B. & W. patents, and you replied with a telegram of April 29th, that Hall had settled the interference, presumably by getting a license.

"The telegram you just handed me is a photostat of the telegram I sent you in this connection.

"Q. Then you can identify this wire as the wire that you sent me on April 28th?

"A. Identified as a photostat which corresponds to a wire that I sent you.

"Q. What next was done, do you recall, after this exchange of wires between us on April 28, 1947, by [89] you in this matter?

"A. We worked in Washington practically every day studying the patents, trying to understand the situation from information then available, and we made a very thorough study of the B. & W.-Hall

(Deposition of Alfred M. Houghton.)

agreement, and we reached certain conclusions, and reported in due course of time to Dr. Paul D. Foote in Pittsburgh.

"Q. Did you attend a conference that was held in Pittsburgh around the first of May?

"A. I did.

"Q. Do you recall who was present at that conference? A. Yes, I do.

"Q. Who was there?

"A. Mr. J. E. Hall, and his son, whose first name I do not now remember.

"Q. Was it the Mr. Hall who is here in the room at the present time, the son?

"A. I understand his name is John Hall, and it was not that Mr. Hall.

"Q. Who else was at the metting?

"A. Dr. Wescott, Dr. Kennedy, Mr. Teplitz, and Mr. Vollmer, all of Gulf Research and Development Company; Mr. James H. Littlehales, my assistant in Washington, who was making the investigation with me, [90] and myself.

"Q. Do you know why this meeting was called in Pittsburgh on or about May 1, 1947?

"A. I think the meeting was called by Dr. Paul D. Foote to be had as soon as Mr. Teplitz and Mr. Hall reached the States—I do not know his reason for calling it except that I think I advised him that this would be a good time to have Mr. Hall give us an explanation as far as he could of the involved situation.

(Deposition of Alfred M. Houghton.)

"Q. Do you recall whether Mr. Teplitz was at that meeting?

"A. Yes, he was, and I think I said so.

"Mr. Caughey: That is correct.

"Q. (By Mr. Scofield): Was this B. & W. situation discussed at the meeting?

"A. Yes, it was. May I volunteer something?

"Q. Yes, I have no objection to your saying anything that you think might be pertinent.

"A. At this stage I was very much interested in the cementing method employed by Gulf, and was studying with particular care the Wright method relating to cementing, as it was my impression from the first telegram to which reference has been made here, that this matter had centered entirely around methods of cementing wells, and I was anxious to obtain Mr. Hall's [91] reaction as to the cementing method, what was done in Venezuela, and to learn all I could about it.

"Mr. Hall, in the discussion, referred to his centralizer patent, and the Wright method patent, which purports to claim a method of cleaning or scraping a well at a producing zone, and then producing oil.

"Mr. Hall, at the meeting, stated it to be his position that his centralizer patent disclosed prior to Wright's method patent the technique of scratching mud from the well preparatory to production, or cementing casing.

"Q. Is that all? A. Yes, sir.

"Q. Do you know whether Dr. Foote had further

(Deposition of Alfred M. Houghton.)

correspondence with Mr. Barkis with regard to this original wire? I call your attention particularly to a letter Dr. Foote wrote to Barkis on May 2, 1947.

"A. I can only recall from copies of the correspondence which I received, and I did receive a copy of a letter of May 2, 1947, by Dr. Foote to Mr. Barkis, requesting him to make an appointment with me for a discussion of this situation.

"Q. Do you have a copy of that letter before you? A. Yes, I do.

"Q. Would you care to read such parts of it into [92] the record as may be pertinent to this situation?

"A. It is a short letter, dated May 2, 1947, to Mr. Bruce Barkis from Dr. Paul D. Foote. It is as follows:

" 'Dear Mr. Barkis:

" 'Referring to our letter of April 18, 1947, and your phone conversation with Mr. Wescott, we have now had an opportunity to discuss this situation with Mr. Teplitz who has returned from Venezuela, and feel that the primary questions involved relate to patents. Therefore, I suggest that you contact Mr. A. M. Houghton, the Munsey Building, Washington 4, D. C., patent counsel for Gulf Research and Development Company, who will be very glad to make an appointment to discuss the patent aspect with you and your attorney, if you so desire, any time upon short notice we will then be prepared to discuss other phases of the question with you here at your convenience.'

(Deposition of Alfred M. Houghton.)

"I would like to interpolate here that he refers to me as patent counsel for Gulf Research and Development Company, and I have said I am patent counsel for Gulf Oil Corporation, but I am patent counsel for all of the subsidiaries of Gulf Oil Corporation, of which Gulf Research and Development Company is one.

"Am I going too much into explanation? [93]

"Q. No, I think it is all right.

"During the first part of May, do you recall whether you had a conference with me, and to refresh your recollection in that connection, I put before you a letter offered as Plaintiff's Exhibit 20, dated May 13, 1947, the letter being a photostat of a letter, copy of which is addressed to the Gulf Oil Company.

"A. Oh, yes, this refreshes my recollection. (Looking at document.)

"Q. Briefly give the circumstances surrounding that letter, if you will.

"A. Prior to May 13, 1947, the date of this letter, you visited me in my office on May 9, 1947, and we exchanged what information was advisable, and it is my recollection that I told you I was somewhat confused by this situation; that there appeared to be a patent controversy either in being or in prospect, and that I was not in a position at the present moment to advise Gulf Research and Development Company as to continuing its orders for Weatherford equipment. I understood you to say that Hall was responsible financially, and you offered to me to obtain a letter of indemnification or a

(Deposition of Alfred M. Houghton.)

letter of indemnity from Hall to cover our purchases of the Weatherford equipment.

"Q. Do you know whether or not the Gulf Oil Company [94] received this indemnity letter, Plaintiff's Exhibit 20?

"A. It is my recollection that you sent the original letter and a copy of it to me, and that I forwarded the original letter to Dr. Paul D. Foote.

"Q. Would you refer to——

"A. But I noted that the letter was addressed to Gulf Oil Company, and I had asked you to see that it was directed to Gulf Oil Corporation, and would cover the subsidiaries so that in acknowledging this letter at some future time, I think that I stated to you that it was received with the understanding that it was directed to Gulf Oil Corporation, and would cover the subsidiaries.

"Q. Would you look at your correspondence file and see whether or not you have a letter dated May 21, 1947, addressed to me, and briefly give the substance of that letter?

"A. Yes, I do have this letter, and it acknowledges receipt of your letter of May 13, 1947—'enclosing an original letter to Gulf Oil Company, and an executed copy giving assurance that Hall's company would intervene and prosecute infringement suits brought by B. & W., Inc., against Gulf, its subsidiaries, et cetera, and pay assessed damages.

" 'I am glad to have these duplicate executed [95] agreements on behalf of the Weatherford Spring Company signed by Mr. Hall and I am accepting

(Deposition of Alfred M. Houghton.)

them with the understanding that they were meant to be addressed to Gulf Oil Corporation instead of Gulf Oil Company.

" 'It may interest you to know that I am reporting to the officials of Gulf Oil Corporation that in view of this letter-agreement I think it is reasonably safe for them to continue to buy the Weatherford Spring Company equipment but that, of course, they are not under any obligation to do so.

" 'Thanking you for securing these letters for Gulf Oil Corporation, I am very truly yours,

" 'A. M. Houghton.'

"Q. Will you also refer to your correspondence file and see if you can state whether or not Mr. Foote or Mr. Wescott had further correspondence with Mr. Barkis about May 29th, suggesting that tests might be made or could be made on the B. & W. equipment?

"A. Please, what was that date again?

"Q. May 29th.

"A. Yes, I think I have a letter, the letter to which you refer. It is a letter of May 29, 1947, to me from Dr. Foote, in which he acknowledges a letter of mine of May 23rd, stating that:

" 'In my opinion the Wright patents owned [96] by B. & W. are not infringed by our present casing cementing technique involving the use of Weatherford scratchers and centralizers and reciprocation of the casing.'

"It further goes on to say:

(Deposition of Alfred M. Houghton.)

" 'Unless you indicate otherwise, we will retain Mr. J. E. Hall's letter dated May 13, 1947, in which he agreed to indemnify Gulf Oil Corporation and its subsidiaries for any award made against them for infringement of B. & W. patents through the use of Weatherford equipment.

" 'Now'—I am quoting from the letter—'we are attaching a copy of a letter dated May 6, 1947, from Mr. Bruce Barkis. Apparently he is reluctant to follow through on the legal aspects of the matter, despite his initial statements on infringement of the Wright patents. Also is attached a copy of our reply to Mr. Barkis, inviting him to visit us for a discussion of the technical aspects of casing cementing. We are taking the stand that there is no legal reason, as far as Gulf is concerned, why we should not proceed as desired in our cementing work and our future dealings with Mr. Barkis will be purely engineering in that aspect. We will advise you of all future developments on this matter.' [97]

"Q. Do you recall whether or not there was a conference called in Pittsburgh in June, 1947, in which Messrs. Wright and Barkis met the members of the Gulf Research?

"A. I was not present at the conference; I cannot recall.

"Q. Do you have any record of the conference?

"A. What date was it?

"Q. Sometime in June, 1947.

"Well, if you have no record of the conference, do you have any recollection of a phone call that was

(Deposition of Alfred M. Houghton.)

made to you at the time of the conference? Mr. Wright, in a deposition taken before the trial in the California suit, testified that Mr. Barkis phoned you from Pittsburgh. Do you have any recollection of that?

"A. I think he did so, but I may now say I have found a letter of June 23, 1947, to me from Dr. Foote, which says in substance:

" 'This is to advise you that Mr. Barkis and Mr. Kenneth A. Wright of B. & W. visited us June 17 for discussion on the use of B. & W. equipment in our new cementing technique.'

"Q. Do you have any recollection about this telephone conversation other than that you had the conversation with Mr. Barkis? [98]

"A. No independent recollection now.

"I may find something in my files which might refresh my recollection, but not at the present moment.

"Q. Along about June 30, 1947, Mr. Wright wrote to Mr. Wescott and sent him two coil spring wire type scratchers.

"Do you have any record in your file that you did anything with regard to that, or do you recall whether Mr. Wescott advised you that they had received these coil type wire scratchers from Mr. Wright?

"A. About what time was that?

"Q. June 30, 1947.

"A. Only by receipt of a copy of a letter Dr. Wescott wrote to Mr. Wright on July 24, 1947, in which he says:

(Deposition of Alfred M. Houghton.)

"'This will acknowledge your letter of June 30, 1947, which transmitted two specimens of your coil spring wire type well cleaning guides.'

"It goes on further to say that:

"'Approval of your equipment for use in our cementing operation would depend upon the opinion of our legal department on the patent and the license situation pertaining to scratchers.'

"Q. Do you recall whether or not Mr. Wescott ever asked you about the coil type scratchers that [99] Wright had sent to Mr. Wescott on June 30th?

"A. I do not think I ever passed upon those two scratchers. My recollection is that someone said they were substantial duplicates of the Weatherford scratcher." [100]

Mr. Scofield: Now, your Honor, you have heard we did ask Mr. Caughey for the letter that was written by Wright to Mr. Wescott sending those two scratchers, and we have also asked that those two or replicas of those scratchers be produced by defendants. The letters are the admission letters Nos. 12 and 13.

I would just like to read those letters. The substance of the letter is that Mr. Wright was sending on to Gulf Research two of these coil-type scratchers.

Do you have those coil-type scratchers with you, Mr. Lyon?

Mr. L. E. Lyon: I have one of them at the present time.

Mr. Scofield: That will be sufficient.

(Deposition of Alfred M. Houghton.)

The Court: Let it be marked for identification.

Mr. Scofield: Yes, I would like to have that marked for identification.

The Clerk: Plaintiff's 88 for identification.

The Court: Do you wish it to be given a plaintiff's number or do you wish it to be given a defendant's number?

Mr. Scofield: I have marked it as an exhibit of the plaintiff's.

The Court: It does not matter, except when it comes to the returning of exhibits sometimes the order specifies the exhibits shall be returned to the party producing them, and the clerk has, without going back to his minutes, no way of knowing except by the identification on the exhibit itself. [101]

Mr. L. E. Lyon: It does not make a great deal of difference, your Honor, to us if we lose that scratcher. We would not feel so bad about it.

The Court: Very well. It will be Plaintiff's Exhibit 88 for identification, Mr. Clerk?

The Clerk: Yes, your Honor, 88.

The Court: Is that a Nu-Coil?

Mr. L. E. Lyon: No, it is not, your Honor.

The Court: Will you tell us what it is?

Mr. L. E. Lyon: A sample scratcher that was sent to the Gulf in June of 1947 and returned to us, that is insofar as we know without anything ever being done with it

The Court: Is it a Multiflex?

Mr. L. E. Lyon: It has no name, your Honor.

(Deposition of Alfred M. Houghton.)

It is not either the Multiflex or the Nu-Coil. I would say it was a sample scratcher that was sent with the letter of June 30, 1947.

The Court: Do you agree on that designation, Mr. Scofield?

Mr. Scofield: Of course, we have called it a replica of the Hall scratcher, your Honor. That is what it actually is. It is just a copy of the——

The Court: That is a conclusion. But what is it in fact? Is it the coil?

Mr. Scofield: It is a coil-type scratcher. It is a [102] replica of Hall's——

The Court: I am not talking about that. Is it agreed that this is the scratcher that was sent with the letter that Mr. Lyon just referred to?

Mr. Scofield: If that is produced as the scratcher or the replica of the scratcher that Mr. Wright sent, then that is the scratcher.

Mr. L. E. Lyon: That is the way it was, your Honor. It is a duplicate, except perhaps as far as size, of the scratcher that they sent with the letter of June 30, 1947, to the Gulf Oil Corporation.

The Court: With the letter of Wright's to the Gulf Oil Corporation?

Mr. Scofield: Yes, sir.

Mr. L. E. Lyon: Yes, your Honor.

The Court: Are those facts agreed upon?

Mr. Scofield: Yes, your Honor; those facts are agreed upon. The letter was dated June 30, 1947.

The Court: Is that letter in evidence here?

Mr. Scofield: Yes, I believe.

(Deposition of Alfred M. Houghton.)

Mr. L. E. Lyon: It is.

Mr. Scofield: Yes, it is. I do not know whether it has been offered, your Honor, but it has been marked for identification as Plaintiff's Exhibit 64. We checked this morning the exhibits that had been offered and those that had not, and I [103] am not sure whether that letter has actually been offered.

* * *

Mr. Subkow: The answer to the question at the top of 27. Just wait a minute.

"A. Only by receipt of a copy of a letter Dr. Wescott wrote to Mr. Wright on July 24, 1947, in which he says:

" 'This will acknowledge your letter of June 30, 1947, which transmitted two specimens of your coil spring wire type well cleaning guides.'

"It goes on further to say that:

" 'Approval of your equipment for us in our cementing operation would depend upon the opinion of our legal department on the patent and the license situation pertaining to scratchers.'

"Q. Do you recall whether or not Mr. Wescott ever asked you about the coil type scratchers that Wright had sent to Mr. Wescott on June 30?

"A. I do not think I ever passed upon [104] those two scratchers. My recollection is that someone said they were substantial duplicates of the Weatherford scratcher."

Mr. Scofield: The answer continues on the bottom of the page there except for that interruption.

Mr. Subkow: "A. And knowing from an en-

(Deposition of Alfred M. Houghton.)

gineering and technical standpoint those gentlemen knew what they were talking about, I advised them on the ground that those scratchers were a duplicate."

Mr. Scofield: Well, I would like to have the scratcher in evidence, but I certainly have no objection to adding this as an "A" exhibit, Plaintiff's Exhibit 88-A. It certainly is easier to handle.

The Court: Very well. The photograph will be marked Plaintiff's Exhibit 88-A for identification. And is it stipulated, gentlemen, that Exhibit 88-A for identification is a true likeness or photograph of Exhibit 88 for identification? [105]

Mr. Scofield: It appears to be.

Mr. L. E. Lyon: It is, your Honor.

The Court: Is it so stipulated?

Mr. L. E. Lyon: It is so stipulated.

Mr. Scofield: Yes, sir.

* * *

"Q. Do you recall whether or not you had any word from me about this thing along in July, the 29th or 30th, with regard to these two coil type scratchers that Mr. Wright had sent to Mr. Wescott?

"A. Yes, I did.

"You called me on the phone, and seemed to be highly excited because you appeared to be under the impression that Gulf was buying or considering buying scratcher equipment from B. & W., and you gave me to understand in no unmistakable terms

(Deposition of Alfred M. Houghton.)

that you were not going to stand for it, and that you were going to sue Gulf Oil Corporation or Gulf Research and Development Company, and I recall distinctly, I said, 'What in the blank are you going to sue on.' Because I did not know you had any patent at the time upon [106] which you could base a suit.

"Q. Is that all that you recall with regard to this conversation?

"A. There may have been other things said. We might have discussed the status of your pending applications or something of that sort, but not having made a memorandum in detail, I would hesitate to testify as to anything definite in that regard.

"Q. In a pre-trial deposition taken before the institution of the California suit, Mr. Wright stated that there was a conference held in Pittsburgh, I believe, about September 8, 1947, and that he took with him to Pittsburgh an attorney by the name of Decker.

"Were you present at that conference?

"A. I was.

"Q. Won't you first state who was there, and the reason for calling the conference, if you know?

"A. There were present at the conference at Pittsburgh September 8, 1947, starting early in the afternoon, Messrs. Wright, Decker, Dr. Wescott, Mr. Vollmer, and myself.

"The reason for calling the conference was that we wanted the opportunity to discuss this situation

(Deposition of Alfred M. Houghton.)

with both sides to the controversy, and to learn the position [107] which Mr. Wright was taking.

"Q. Wright said in his deposition that he took his attorney down there to discuss the over-all merits of the B. & W. patent situation.

"Is it your recollection that that was what was discussed at that meeting?

"A. Yes, and so far as the B. & W. patents were concerned, we discussed primarily the cementing method patent, which Mr. Wright had called to our attention in the first telegram to which we have referred. But we also discussed cementing technique, the scratcher situation, and we went into detailed discussion as regards the contract between Hall and B. & W., which was entered into in the settlement of the interferences which were involved between Wright's scratcher application and Hall's scratcher application, and between Wright's patent relating to cementing, and one application filed by Hall on the same subject.

"Q. According to Wright in his deposition that he gave, Decker stated at this conference in Pittsburgh that he believed the Gulf Oil Company's use of the Hall device was an infringement of the B. & W. method patent. Do you recall that?

"A. Yes, I recall that he made some such assertion. I had already given an opinion that I did not think it [108] was, but, as a result of Mr. Decker's statements, when I returned to Washington, I reviewed that opinion and, as I recall, adhered to it.

(Deposition of Alfred M. Houghton.)

"Q. Now, Wright also said in his deposition that Decker at this conference in Pittsburgh, stated that B. & W. had placed J. E. Hall, and the Weatherford Spring Company, on notice of infringement. Do you recall Decker's making that statement?

"A. Yes, I do.

"Q. At Pittsburgh?

"A. He did say so. He did not go into details as to what patent or as to what possibly might be infringed, but he did make that statement.

"Q. Wright also said in this deposition that you called me on the 'phone at this Pittsburgh conference. Do you recall 'phoning me while you were in Pittsburgh?

"A. I may have done so, but I don't recall it definitely now. I wouldn't deny it. If you could suggest the subject of the conversation I might recall it.

"Q. Well, frankly, I don't recall it myself, but you may have called me. I certainly don't recall anything that was said.

"Do you have a copy of a letter which Mr. Bruce Barkis wrote to Mr. Wescott on April 28, 1948, in [109] your file? A. What is that date?

"Q. April 28, 1948.

"A. It is a letter of what date?

"Q. April 28, 1948, written by Barkis to Wescott.

"A. I don't appear to have a copy of that, but I do now refresh my recollection about a letter of

(Deposition of Alfred M. Houghton.)

April 28, 1948, written to me by Mr. Bruce Barkis. Apparently it had some——

"Q. Does he indicate in that letter that he had seen you prior to the writing of that letter?

"A. I would judge so from that because he says:

" 'The return trip to Houston was uneventful. Mr. Smith left me at Memphis, as he was returning to Fort Worth, and Weatherford, to resume the taking of depositions. Several pieces of our equipment were forwarded Monday by Railway Express. Receipt is enclosed. You may either keep this equipment or return it, at your convenience. We appreciate your courtesy in arranging a discussion of the scratcher, centralizer situation on such short notice, and thoroughly enjoyed the luncheon visit with you.'

"So, he must have been here.

"Q. Do you recall a meeting which you had with [110] Messrs. Wright and Barkis some time around April 6, 1948, or with Mr. Barkis alone? I just show you this letter of April 28 which——

"A. Yes, I have a memorandum to the effect that on April 23, 1948, there was a conference here with Messrs. Bruce Barkis, Roland Smith.

" 'We discussed the equipment he intends to supply if he can get Gulf's order. He said he would send us specimens for study. I told him that we would consider the question of infringement, but that in line with the policy of the patent department we would not recommend purchases.' " [111]

* * *

(Deposition of Alfred M. Houghton.)

"Q. When was Mr. Caughey in your office for the first time, do you recall? My notes indicate that it was some time in April, 1949, is that correct?

"A. Yes, that is correct. It was on April 6, 1949, and he came here in the company of Mr. K. A. Wright.

"Q. Is that the first time you had met Mr. Caughey?

"A. Yes, the first time, according to my recollection.

"Q. Do you recall who arranged that meeting?

"A. No, I don't recall. It might have been arranged over the 'phone or something like that. I have no recollection, no definite recollection, as to that.

"Q. Do you recall what was discussed at that meeting?

"A. Oh, not in detail, but we went over the whole patent situation again.

"Mr. Caughey posted me as far as possible as to [114] litigation which was going on. We discussed a number of things which might be useful to me in my consideration of this complicated situation.

"I think I went into detail as to why I did not believe that Gulf infringed the Wright cementing patent, but that was not a matter of importance, as I was assured by Mr. Wright then and other times previously, that Wright had no intention of suing Gulf on the patent." [115]

* * *

(Deposition of Alfred M. Houghton.)

"The Witness: This letter of April 15, 1949, to me from Mr. Caughey refreshes my recollection somewhat as to the subject of the conversation I had with him and Mr. Wright when they visited my office on April 6, 1949. Mr. Caughey states in his letter of April 15:

"'Arrived back in Los Angeles last Sunday evening after unexpectedly leaving Washington Friday afternoon in order to spend some necessary time in Chicago. Found it necessary to take some depositions before getting around to supplying you with the promised information.

"'Mr. Wright went directly to Houston after leaving Washington, and you should be in receipt of a letter of indemnification on the letterhead of B & W, Inc., signed by both Mr. Wright and Mr. Barkis as officers of the corporation.

"'You should also be in receipt of a copy of the Jones and Berdine article which was given out in the sectional meeting of the API in [117] Los Angeles in March, 1940. If you are not in receipt of a copy from Mr. Wright it is because it was necessary for him to have a copy made. He expects to return to Los Angeles next Monday, and I will check at that time as to whether the same has been forwarded to you.

"'Relative to the statement made by Mr. Wright as to the registration of his United States patents in Great Britain and Canada, I find upon checking with the patent attorney who prosecuted the applications resulting in the issuance of the United

(Deposition of Alfred M. Houghton.)

States patent, that an application had been filed in Great Britain corresponding to 2,374,317, and that applications have been filed in Canada corresponding to patent 2,338,372 and 2,374,317. The reason for not filing on both in Great Britain is, as you can readily understand, the method patent would not be performed there. However, Great Britain does do the manufacturing for a great part of the Empire, and for this reason it was thought advisable to file. Therefore, Mr. Wright's statement as to registration of United States patent is in error.' "

Mr. Scofield: Now, won't you jump over to page 40, the middle, beginning the first paragraph? [118]

Mr. Subkow: "The letter further goes on to say that he enjoyed meeting me in Washington, 'and appreciated the time you gave to the problem of B & W, Inc. Trust things will work out so that Gulf may be able to use B & W equipment. If they do, am sure they will find both Wright and Barkis well versed in the technical details, and able to assist in the practical problems in the field.

" 'There is no additional information as to developments in the Patent Office. If I hear anything of interest will let you know. Will also keep you advised as to development in the litigation with Hall in Louisiana, and here in Los Angeles.' "

Mr. Scofield: Now skip down to the bottom of the page to question 98.

"Q. Now, did you hear from Wright, who was

(Deposition of Alfred M. Houghton.)

evidently to supply you with this promised information?

"A. Yes, I did. I am quite sure I did. I will find the letter in a minute. I am quite sure I did.

"Yes, I received a letter from Mr. Wright dated May 2, 1949, received by me May 9, in which he said:

" 'Mr. Caughey and I enjoyed our visit with you and Mr. Littlehales there in Washington. He returned to Los Angeles on that week end and I came back to Los Angeles by way of Houston and the Mexican border. [119]

" 'By the time I reached Houston I was gratified to find the Gulf Oil Corporation had started giving us business, for which we are appreciative, and will make every effort to give the right service and the right equipment.

" 'Enclosed is a copy of the Jones and Berdine report. You will note this was printed by Baker Oil Tools, Inc. They circularized the trade with this publication in June of 1940, and they gave me two of them.

" 'Please accept this copy with our compliments, and it is barely possible B & W may reprint the articles themselves in the near future, as there is more interest in this subject today than there had been at any time since the inception of the scratcher work. Yours truly, B & W, Inc., K. A. Wright.'

"These two letters refresh my recollection somewhat as to discussions I had with Mr. Caughey and Mr. Wright on April 6. Shall I go on?

(Deposition of Alfred M. Houghton.)

"Q. Yes, it is perfectly all right.

"A. Both Hall, through you, and Mr. Wright himself and through his attorneys, have been very helpful in this situation, giving me all information which they [120] could, and which they thought would assist me in passing upon the legal question.

"You had given me power to inspect the original scratcher, Hall scratcher, application, and from time to time you kept me posted as to the prosecution of those cases, because I had an idea that the kind of claims that you would eventually get in one of your continuing applications would have a bearing on what Hall could manufacture in light of the Hall and B & W contract, which settled the interference. So, to the extent that Mr. Caughey was posted, he talked about the status of those pending continuation applications, and I understood that he was doing this because you were keeping him posted.

"There was some discussion as to the type of claims you, as attorney for Hall, might try to obtain in one or more of these applications, and reference was made by Mr. Caughey or Mr. Wright to some printed publication, which he thought might have a bearing on that type of claim.

"I was glad to have the information as it helped me to review the situation more thoroughly, and I think the article which Mr. Wright sent me was the one in question.

"Q. Did you have any other correspondence with [121] either Mr. Caughey or Mr. Wright,

(Deposition of Alfred M. Houghton.)

either prior to this meeting or subsequent to the meeting, up to the time your deposition was taken?

"A. I think so; letters, perhaps, making an appointment—I had a conversation with Mr. Caughey about these depositions that are being taken, but I don't recall in detail, without going through the file; but I don't recall that there was anything that would have any particular bearing on the situation.

"Q. Do you recall a conference that you had with me soon after this meeting with Messrs. Wright and Caughey? I think our talk was about April 19, 1949.

"A. According to a memorandum I have here, the talk was on April 19, 1949, and we discussed the pending Hall applications; we discussed the litigation. I think you posted me up to date, and we discussed some foreign patents.

"What I gathered from the conversation was as to the scratcher patent of Wright, it appeared that you contended that it is restricted to a fixed connection of the scratcher with the casing, whereas Wright takes the position that limited movement of the scratcher along the casing is intended, and is within the terms of his claim.

"You stated to me that Hall was trying to cover that feature. There may have been other [122] things discussed.

"Q. Was your last answer made from some memorandum that you had made?

"A. Yes, I think we made a little memorandum of the substance of your visit here, which I try to

(Deposition of Alfred M. Houghton.)

do every time. I will look through my file and see if there is not a more detailed memorandum.

"Q. I don't care any more about that, because I don't believe it has any particular bearing on what we are here for, but do you have a letter dated May 26, 1949, that you wrote to me?

"A. Yes, I have my copy of the letter I wrote to you on May 26, 1949.

"Q. Does this refer to our meeting on April 19?

"A. It does.

"Q. Won't you read that letter into the record?

"A. The address appears, the date of May 26, 1949, and the subject and docket number on my copy is marked blind because I, as a rule, do not disclose the way I entitle my files nor do I disclose the file numbers.

"The letter starts out:

" 'Dear Tom:' " [123]

* * *

"Q. I put before you a photograph and ask you if you can identify the scratcher that is shown in that photograph."

Mr. R. E. Lyon: Where is that?

Mr. Scofield: At the bottom of page 49, question 118.

"A. From all parts that I can see in this photograph, it is the same as the one he showed me that afternoon at my house.

"Mr. Scofield: I would like to have the reporter mark the photograph which the witness has identified as Plaintiff's Exhibit 60 for identification."

(Deposition of Alfred M. Houghton.)

Now, your Honor, I believe that the photograph, this Exhibit No. 60, is attached to the original deposition at the back. [125]

* * *

The Court: This is a photograph of what, now?

Mr. Scofield: That is a photograph, your Honor, of the Nu-Coil scratcher. (Reading.)

"Q. Now, you have indicated in one of your previous answers that one of these Nu-Coil B & W scratchers was shown you by Mr. Wright during the meeting Saturday, have you not?

"A. Yes. I don't remember whether I referred to it as new or not; I don't know its age. I just know that it was one they were introducing.

"Q. Did he state that it was identified or called their Nu-Coil type?

"A. Yes, I think he did."

Mr. Scofield: Now, skipping to the top of page 51, question 122:

"Q. Was there any discussion as to Gulf receiving any of these scratchers?

"A. No, but I think they did. I have heard somewhere that Gulf did receive them. [127]

"Q. Do you know where you heard that from?

"A. Yes, I think a description or a drawing or a photograph of one was sent to me for an opinion as to infringement, and it was quite recent.

"Q. Do you know whether or not you gave an opinion with regard to this Nu-Coil type scratcher?

"A. I know that I studied the matter with Mr. Littlehales' assistance, and that we had under con-

(Deposition of Alfred M. Houghton.)

sideration drafting an opinion, but at the time we were basing that on the assertion of Mr. Hall that he had certain claims allowed in one of his continuing applications. We later heard that those claiins are not allowed, so that our thoughts as to the opinion will have to be considerably revamped.

"Q. How long ago did you first hear of this new type or Nu-Coil type scratcher, B & W scratcher?

"A. As a rough guess, I would say within three weeks or so."

Mr. Scofield: Now to the top of page 52, question 129:

"Q. Who asked you for the opinion with respect to the Nu-Coil type scratcher?

"A. It probably came from Mr. Vollmer over Dr. Foote's signature." [128]

* * *

"Q. Do you have a letter in your file with respect to that?

"A. Yes, I have such a letter.

"Q. What is the date of it?

"A. It is dated November 28, 1949, which rather surprises me because I thought it was much more recent than that. The explanation of that is that Mr. Littlehales in my office was considering the matter, and we have been moving our offices, and I have had little opportunity in the last two or three weeks to consult with my assistants.

"Q. Who is the letter from?

"A. The letter is signed by Dr. Paul D. Foote.

"Q. Would you read the letter into the record,

(Deposition of Alfred M. Houghton.)
please, or those parts of it that have to do with the Nu-Coil type scratcher?" [129]

* * *

"A. In paragraph 2 it says:

" 'In a further attempt to compete with Weatherford, B & W, Inc., have just started production on a new design of scratcher, photographs of which are attached. According to B & W, this so-called Nu-Coil scratcher can be fabricated at a lower unit cost than the current Weatherford scratcher, and B & W expect to be able to match all price reductions made by Weatherford. Messrs. Barkis and Wright [133] inform us that in the opinion of their patent attorneys the Nu-Coil scratcher will not infringe any patent that may issue on the Weatherford scratcher.

" 'We have not yet made a thorough examination of the Nu-Coil scratcher but a casual inspection of the model indicates that the new device, for all practical purposes, is the same as the regular Weatherford scratcher. B & W are quite anxious to have the Nu-Coil scratcher approved for use in Gulf wells since it is very unlikely that we will purchase any more Multiflex scratchers.

" 'To the best of our knowledge a U. S. patent has not yet issued to Hall on his design of scratcher. However, during his last visit, Mr. Hall handed us a copy of six claims which he stated have been allowed by the Patent Office. These claims are attached. Mr. Hall stated that Claim 8 would be infringed by the B & W multi-flex scratcher, and

(Deposition of Alfred M. Houghton.)

undoubtedly he will make the same claim for the Nu-Coil scratcher. Mr. Hall also showed us the file wrapper on the Wright patent, No. 2,338,372, which is one of the exhibits involved in the litigation between Hall and B & W in California. You will recall this Wright patent relates to a method for conditioning well bores with scratchers. Mr. Wright has consistently contended that [134] his patent applies to the method of cementing casings now used by us. However, the proceedings in the Patent Office make it very clear that they would not allow Wright to include in his method the process of using scratchers for cementing casings. In all probability the litigation between Hall and Wright will continue for possibly years before it is finally settled. In the meantime, we do not think that we should continue to attach as much significance to the Wright method patent 2,338,372 as we have in the past.

" 'At your convenience we shall appreciate your opinion on the advisability of using the B & W Nu-Coil scratcher in our cementing operations.'

"Q. What was the date of that letter, Mr. Houghton? A. November 28, 1949.

"Q. Now, you have indicated from the reading of the letter that there was a photograph attached to the letter? A. Yes, there was.

"Q. Do you have that photograph?

"A. Yes, I do. Here it is.

"Q. Would you object to my having photostats made of this so that they can be marked for iden-

(Deposition of Alfred M. Houghton.)

tification and offered or put in, in connection with your deposition? A. No." [135]

Mr. Scofield: I requested that the photostats of the two photographs which the witness has produced be marked as Plaintiff's Exhibits 61 and 62 for identification.

Now, those, your Honor, are the two photographs, 61 and 62. [136]

* * *

The Court: Exhibits 61, 62, 64, and 88-A may be received in evidence.

Mr. Scofield: Beginning at question 139.

"Q. I notice on the reverse side of the two photographs, that there is a notation reading: 'To Recorder Give No. 3854, the Inman Company, 2491 American Avenue, Long Beach 6, California.'

"Did you know from your own knowledge, as to whether or not these photographs were photographs furnished from Gulf or were they furnished from the B & W company?

"A. I know, to my own knowledge, they were furnished to me from Gulf. I have no other knowledge about it."

Mr. L. E. Lyon: We admit, your Honor, they were furnished by B & W.

Mr. Scofield: Very well.

The Court: Do you accept the stipulation?

Mr. Scofield: That is stipulated. That is all of that deposition, your Honor. [139]

* * *

Mr. L. E. Lyon: I will complete the deposition

(Deposition of Alfred M. Houghton.)
with direct examination, starting with page 57, question 140.

(Mr. L. E. Lyon reading questions and Mr. Doble reading answers:)

Mr. L. E. Lyon: "Q. When you talked with Mr. Wright and Caughey on Saturday, when you were shown the Nu-Coil scratcher, did Mr. Wright indicate to you why he was showing you the scratcher, in your discussion or conversation?

"A. No. It was not shown to me until after our discussion on the matters was substantially over, and I said, 'I see you have a package out in the hall. Is there anything in there that I would be interested in?' Either Mr. Wright or Mr. Caughey opened the package and said, 'Yes,' and they then showed me the Nu-Coil [142] scratcher.

"Q. Did Mr. Caughey comment upon this scratcher when it was shown to you?

"A. Yes, he and Mr. Wright together at the time, its manufacture, and we went into this construction from a mechanical standpoint.

"Q. Was there any other discussion, do you recall? A. Yes.

"Q. What was it?

"A. I told him I had a faint recollection that that had passed through my office in one form or another, and that we had drafted some kind of a report to which I had not gone into detail.

"Q. Is that all you recall about this particular scratcher?

"A. Yes. It was the tail end of the talk, and

(Deposition of Alfred M. Houghton.)

we had some guests coming into the house, and I think I rather impolitely suggested that the conference ought to be over."

Mr. Lyon: Dropping down to question No. 147, examination by Mr. Caughey:

"Q. In your testimony, Mr. Houghton, and I believe it was in connection with the letter, either from Dr. Foote or someone else in Pittsburgh, from [143] the Gulf Research and Development Company, you referred to a letter of May 6, 1947, which had been written by Mr. Barkis either to Dr. Wescott or Mr. Foote.

"Have you a copy of that letter in your files?

"A. Yes.

"Q. Would you mind reading that into the record, please?

"A. This is apparently a copy of a letter showing B & W, Inc., 3545 Cedar Avenue, Long Beach, California, No. 22072, and it was addressed to Gulf Research and Development Company, attention Mr. Paul D. Foote, Post Office Drawer 2038, Pittsburgh, Pennsylvania.

" 'Dear Mr. Foote:

" 'Your letter of May 2, 1947, was received. Our primary concern was the inclusion of our equipment in your investigation of cementing technique and equipment. We have originally understood that Mr. Teplitz, since he was making an API report of his work, would follow the pattern established by Jones and Berdine in 1939, and other research personnel, and include all available cementing equip-

(Deposition of Alfred M. Houghton.)

ment directly related to the problem of cement placement in his tests.'

"Q. Cement what?

"A. Cement placement in his tests. [144]

" 'We felt that the matter of patents could be properly postponed until after such tests were made.

" 'We were prepared to submit data showing that satisfactory cement fill in the entire section reached by the cement slurry and a positive seal in the producing sections can and is being obtained with a considerable saving over your present usage. Before taking any positive action on the patent situation we would appreciate hearing from you as to whether field tests of our present and new equipment could be arranged. Very truly, yours, B & W, Inc., Bruce Barkis.'

"Q. Mr. Houghton, there was some reference made also in your testimony relative to a reply to that letter which, I presume, would be by Mr. Foote. Have you a copy of that reply?

"A. Yes, there is a copy of a letter of May 29, 1947, in my file, directed to Mr. Bruce Barkis, and so forth.

" 'Dear Mr. Barkis:

" 'In reply to your letter of May 6, 1947, we shall be glad to have you visit us for a discussion of the technical aspects of primary casing, [145] cementing techniques and possibilities of test on your equipment.

(Deposition of Alfred M. Houghton.)

" 'If you will advise us of a date other than the week of June 23, that is convenient to you, we will arrange to have present those of this laboratory concerned with our cementing studies.'

"Q. That is the end of the letter?

"A. Yes. 'Very truly yours, Paul D. Foote.'

"Q. Mr. Houghton, reference has been made, and you have testified relative to, a meeting at Pittsburgh on September 8 and 9, 1947, and you have testified as to some of the statements made there; and Mr. Scofield also, in framing his questions, based said questions upon statements made by Mr. Wright in a deposition given in California prior to the trial there.

"You did not wish to infer or to have the Court believe that that was all that took place in Pittsburgh, did you, Mr. Houghton, as far as the conversation is concerned?

"A. No. I was trying to answer questions as directly as I could, and I don't think I said that the conference continued over to the 9th, but it did.

"Q. Have you any documents or papers available which you have referred to or refreshed your recollection from by which you now can tell us or supply that [146] document so that you could tell us the substance of what conversations took place in Pittsburgh on September 8th and 9th?

"A. Yes, I do have.

"Q. If you have such a document would you please advise what it is, and what it purports to cover?

(Deposition of Alfred M. Houghton.)

"The Witness: As this matter developed, I was very much concerned, from the patent standpoint, and I was seeking information to aid me in rendering an opinion to the Gulf Research and Development Company, so that I requested Mr. Leslie Vollmer, who was present at the conference to which you refer, to make as accurate notes as he could as to what was said, and I told him that if he would send me a copy of his notes later on, I would suggest amendments to them, according to my memory, or approve them as the case may be, and Mr. Vollmer did, within a reasonable time, through one of the officials of the Gulf Research and Development Company, send me a memorandum in accordance with my request.

"Q. Have you had an opportunity to read over that memorandum?

"A. Yes, I read it several different times.

"Q. Did you read it shortly after it was received or on or about the time it was received from Mr. [147] Vollmer?

"A. I read it practically immediately upon its receipt.

"Q. Did you have occasion to make any corrections of it or, as suggested by you, if there were any corrections to be made?

"A. No. It was a very accurate memorandum of what happened at the conference, and I had no suggestions to make.

"Q. Would you have any objections to that memorandum either being read into evidence or a copy being placed into evidence, Mr. Houghton?

(Deposition of Alfred M. Houghton.)

"A. No, except as to what it might contain bearing on remarks made by Wescott or Vollmer or myself from a patent standpoint.

"I do not want the memorandum to be used as my opinion as to the patent situation at the time. I think that is within the province of the judge. It is his prerogative, not mine."

Mr. L. E. Lyon: Go ahead.

Mr. Doble: "I shall be glad to do so if you will rely upon my judgment in this respect."

Mr. L. E. Lyon: Mr. Caughey says: "I think we can."

Mr. Schofield said: "I would be agreeable to that."

Mr. Doble: "The Witness: That was shortly after [148] September 8th.

"Mr. Scofield: As I understand it, this is Mr. Vollmer's report to you after the meeting with Messrs. Wright and Decker in Pittsburgh?

"Mr. Caughey: Yes.

"The Witness: I don't know that it was his report to me. It was a copy of the notes he took at my request and sent to me for my information.

"This memorandum was forwarded to me on September 25, 1947, by Dr. Paul D. Foote, and he referred to it in his letter of transmittal as a memorandum of the September 8 meeting with Messrs. Wright and Decker of B & W, Inc.

"This memorandum is based on the combined notes made by 'you and Mr. Vollmer during the meeting,' from which it would appear that I made

(Deposition of Alfred M. Houghton.)

some notes and probably handed them to Mr. Vollmer.

"Mr. Scofield: I don't like to interrupt, but does it indicate in the memorandum who was present at the meeting?

"The Witness: The memorandum that was sent does indicate who was present. The memorandum starts out:

" 'Memorandum of meeting at Pittsburgh, September 8 and 9, 1947, on casing cementing.'

"Then it gives the numbers of my files, which I [149] would rather not divulge. Then it goes on to say:

" 'Present: Mr. K. A. Wright, B & W, Inc., Los Angeles, California.

" 'J. Harold Decker, General Counsel, B & W, Inc., Los Angeles, California.

" 'Mr. A. M. Houghton, Patent Department.

" 'Dr. B. B. Wescott, Gulf Research and Development Company.

" 'Mr. L. W. Vollmer, Gulf Research and Development Company.

" 'The conference began at 2:00 p.m., September 8, in the Gulf law library. Mr. Wright reviewed his background in the art of casing cementing, and claimed that he had conceived the idea of mounting wire bristle scratchers on casing and reciprocating the casing in the well bore for the purpose of removing mud cake, thereby preventing channeling of subsequently placed cement and effecting perfect cement seals. He stated that the first casing cement

(Deposition of Alfred M. Houghton.)

job in which B & W wall cleaning guides were used in connection with' ''——

Mr. Scofield: "in conjunction."

Mr. Doble: "Were used in connection with"——

Mr. Scofield: "in conjunction with." [150]

Mr. L. E. Lyon: "in connection with," here.

Mr. Doble: " 'in connection with reciprocation of casing was completed January 5, 1940; the operation was completely successful. The sale of B & W guides was started in June, 1940; Mr. Wright filed U. S. Patent Application No. 369,389 December 10, 1940, which matured into Patent 2,374,317 April 24, 1945.

" 'Mr. Wright further stated that in April, 1941, Mr. J. E. Hall, Sr., approached him in Los Angeles with a Hall design scratcher proposing that B & W, Inc., sell the Hall scratcher. Hall also approached Mr. Barkis in Houston a short time later on the same proposal; in both instances B & W declined.

" 'Hall filed Patent Application Serial No. 388,-891 April 16, 1941, 15 months after the first successful application of the B & W equipment and method.

" 'Mr. Wright had called attention to Weatherford Spring Company ads in the Oil Weekly July 7, 1941, and the Oil and Gas Journal, September 11, 1941, for Acme wall cleaning scratchers. These ads listed exactly the same scratcher sizes and price schedule given in the B & W Bulletin No. 101 which was released in February, 1940. Mr. Wright also claimed that B & W introduced the method

(Deposition of Alfred M. Houghton.)

of free mounting of scratchers [151] on casing and that three months later Hall copied this improvement. Photostatic copies of the Weatherford ads were obtained for Mr. Houghton. All of this was intended to show that Wright was the originator of the scratcher technique and that Hall simply followed Wright's teachings with the Hall design scratcher.

" 'Interference No. 81,240 between Hall application Serial No. 388,891 (filed April 16, 1941) and Wright application Serial No. 369,389 (filed December 10, 1940), contained a number of counts which now appear as claims 1, 2, 5 and 6 in the Wright patent 2,374,317. At the time of the interference there was a claim 19 allowed in the Hall application which was directed specifically to the figure shown in the drawing of the Hall application and which could not be included in the interference by Wright. [152]

" 'It was Mr. Wright's contention that the Hall claim 19 described the device to which Hall subsequently was given certain rights in the agreement that settled the interference. Mr. Wright stated that Hall approached him for a settlement of the interference in the company of Elmer Hall and Mr. William McKinley of the National Supply Company who apparently acted as intermediary. A meeting was held with Mr. Maxwell, attorney for Wright, during which the agreement settling the interference was reached. Mr. Maxwell wrote a memorandum on this meeting which stated defi-

(Deposition of Alfred M. Houghton.)

nitely that the meeting was held at Hall's instigation, and that Wright and Maxwell believed that Hall had very little upon which to base a settlement. Mr. Decker promised to provide Mr. Houghton with a copy of the Maxwell memorandum. The apparent purpose of this memorandum and Mr. Wright's review of the meeting was to show that they were giving to Mr. Hall in the settlement only that which Hall would have obtained if the interference had been contested, as they believed that Wright would prevail on all counts in issue.

" 'Mr. Wright asserted that Hall insisted that the scratcher to which he wanted exclusive rights under the settlement was the device described in his [153] application Serial No. 388,891, despite the fact that in 1941 Hall had advertised the scratcher, which he is now selling, and which is not the scratcher described in the Hall application.

" 'Mr. Decker had the opinion that if there is any ambiguity in the agreement the court would probably interpret it according to the circumstances prevailing at the time of settlement. Mr. Decker felt that Hall would only have the exclusive right under any patent issuing on the Hall application to claims similar to the Hall claim 19 or specifically to the design and construction of the scratcher shown in the Hall application 388,891 and interference 81,240.

" 'There was very little discussion of the second interference number 81,559 between the Hall application, Serial No. 528,183 (filing date unknown)

(Deposition of Alfred M. Houghton.)

and the Wright patent 2,338,372, Serial No. 291,027 (filed August 19, 1939). The counts in this interference were claims 1 to 8 of the Wright patent 2,338,372, which were copied by Hall after the Wright patent was issued. Mr. Wright stated that both interferences were consolidated, but Mr. Houghton thinks he meant that the time for taking testimony in the two interferences was to run simultaneously.

" 'In the discussion of the first interference [154] 81,240 reference was made to the motion to dissolve brought by Hall, which set up 42 prior patents but which was later amended to reduce the number to about 18. The conference to settle was held before this motion was argued, and the concessions in both interferences were filed by Hall as a result of the settlement agreement.

" 'In the discussion of Hall's continuation-in-part application Serial No. 627,013 (filed November 6, 1945), Mr. Wright pointed out that the scratcher shown in this application appeared to be identical to the scratcher illustrated in Oil Weekly, July 7, 1941, and the Oil and Gas Journal, September 11, 1941, and the scratcher now being sold by Hall to Gulf. Mr. Wright contended that Hall would not be able to obtain a patent on this scratcher because the device was described in a printed publication and was on sale and in public use more than one year before the filing date of the continuation-in-part application. This was new information to Mr. Houghton and he thought it materially altered the

(Deposition of Alfred M. Houghton.)

situation, as explained in part in his letter of August 14, 1947, to Dr. Foote. (Note: Hall's application Serial No. 627,013 initially covered three devices—figures 1 and 2 referred to the scratcher advertised in 1941 and now being sold; [155] figure 3 was the scratcher covered by claim 19 of Hall application, No. 388,891; figures 4, 5 and 6 referred to what Hall now calls his close tolerance scratcher, which is distinguished from the scratcher of figure 1 in that spiral or conical springs are used rather than the coil springs of the Weatherford regular scratcher now being used by Gulf. When Hall was required to elect his preferred species in the event that no generic claim is found allowable in application 627,013 he chose the close tolerance scratcher with the spiral springs illustrated in figures 4 to 6 of the application. Presumably this choice was made because the Examiner considered the coil spring idea old in the art. It seems obvious that if a patent on the spiral spring catcher elected should be issued the device would not fall under the terms of the Hall-Wright agreement and would be dominated by the broad claims of Wright Patent No. 2,374,317.)'

"Mr. Decker stated that Hall had been notified several months ago that he was infringing Wright patents Nos. 2,338,372 and 2,374,317. They intended to bring suit before laches becomes effective."

Mr. Subkow: "* * * becomes a factor."

Mr. Scofield: They apparently don't have the corrections made [156] by Mr. Houghton.

(Deposition of Alfred M. Houghton.)

Mr. L. E. Lyon: No, we don't have any corrections made by Mr. Houghton. If Mr. Houghton said "it becomes a factor," did you say?

Mr. Subkow: "* * * becomes a factor."

Mr. L. E. Lyon: "* * * becomes a factor"—I would just as soon it be corrected in that way.

(Reading.) [157]

" 'Mr. Wright and Mr. Decker intimated that they might be receptive to a settlement with Hall, but under the current circumstances they felt that B & W dominated the legal situation, and any such overtures would have to be initiated by Hall. Their suggestion that Gulf attempt to prevail upon Hall to this end was declined for obvious reasons in view of the amount of scratcher equipment being purchased currently by Gulf. Mr. Wright stated that B & W did not wish to monopolize the scratcher market but felt that their patents and early development work entitled them to a fair share.

" 'Contrary to Mr. Houghton's opinion given in his letter of May 23, 1947, to Mr. Foote, Mr. Wright and Mr. Decker believed that Gulf's current cementing technique was an infringement of Wright's patent No. 2,338,372. Mr. Decker cited a court opinion to the effect that the omission or addition of a step to a patented method would not necessarily avoid infringement of the patented method. Decker and Wright were of the opinion that the broad claims of the Wright patent covers our cementing operation, which we contended seals the formation

(Deposition of Alfred M. Houghton.)

and hence does not "thus expose the virgin earth formation." Mr. Decker and Mr. Wright both stated they had no present intentions of bringing suit against Gulf for infringement of the [158] Wright patent and definitely stated that they would not claim damages for any of the cementing work done by Gulf in the past. They repeated their remarks that they were interested only in obtaining a fair share of Gulf's scratcher purchases. (Note: Although infringement of Wright patent No. 2,338,-372 by Gulf currently seems to be academic in aspect it would seem advisable to reconsider the matter in the light of the opinion of Decker and Wright so as to be prepared for unforeseen future developments in the extraordinarily involved scratcher situation. According to Wright prior art cited by the Examiner on Wright patent No. 2,338,372 was as follows: Bashara, 1,342,618; Jones, 1,371,425; Hall, 2,220,237; Black, 2,151,416; and Steps, et al, 1,775,376.)

" 'In the discussion on the Weatherford type scratchers that B & W is duplicating and offering to Gulf, Mr. Wright advised that B & W would start production September 15, 1947; B & W's fabricating capacity for the Weatherford type scratcher would be 100-200 per day. Mr. Wright also advised that B & W will manufacture centralizers under the Steps patent No. 1,775,376 which expired September 9, 1947. He promised to provide us with samples of both straight and spiral centralizers. [159]

" 'Discussion of the scratcher patent situation in

(Deposition of Alfred M. Houghton.)

Venezuela developed that public use of a device or a method in Venezuela prior to filing a patent application invalidates the application. In view of this it appeared that there would be no obstacle in the way of using the B & W duplication of the Weatherford scratcher in Venezuela, even though Hall might ultimately obtain a U. S. patent. (Note: It is not certain that Hall did not promptly apply for a patent in Venezuela; this point should be clarified.)

" 'Mr. Houghton pointed out that despite the fact that there is no patent on the Weatherford scratcher at present which would prevent exact duplication of that scratcher by B & W, it would be inadvisable for Gulf to purchase the Weatherford scratcher from B & W in the light of the law applying to fair trade practices. It was pointed out that the new cementing technique had been extensively adapted to and was highly important in Gulf's operations and that a continuing source or sources of scratchers was imperative. We expressed a preference for the Weatherford design scratcher but agreed that highly beneficial if not equal results in most cases might be obtained with the regular B & W wall cleaning guides.

" 'Mr. Wright was informed that our initial efforts [160] were directed toward the development of a satisfactory cementing technique and that we had selected for this work the equipment which was considered to have the best potentialities. A cementing technique is now well established and future work will be concerned with minimizing the

(Deposition of Alfred M. Houghton.)

cost of equipment and determining what equipment other than that initially tested can be used for satisfactory results. Mr. Wright was further informed that we hope to make field tests with regular B & W guides in the future to establish the extent to which they could be utilized.

"'In concluding the conference Mr. Houghton again stated that the best solution of the involved patent situation on scratchers and their use would be an amicable settlement out of court between Hall and B & W. Mr. Houghton suggested to Mr. Decker that a Washington associate would be helpful in further handling of the scratcher problem and named Cushman, Darby & Cushman as a reliable patent firm.'

"Q. Mr. Houghton, with reference to Plaintiff's Exhibit 19, which was the telegram that Mr. Barkis directed to Dr. Foote, when you received a copy of that telegram, did you consider that that was a threat that Gulf Oil Corporation or any subsidiary of Gulf would be sued for infringement?" [161]

Mr. L. E. Lyon: The answer of Mr. Houghton is what?

Mr. Scofield: (Reading.)

"I definitely did not consider it as a threat to sue on any patent, but considered it in the ordinary line of business as comparable to a number of letters and oral statements made to us from time to time.

"I considered it from the standpoint that Gulf Oil Corporation does not want to infringe anyone's valid patent, and that we were glad to have called

(Deposition of Alfred M. Houghton.)

to our attention a patent which our operations might infringe, and I considered it my only duty to investigate it from that standpoint and make my report.

"But in line with a number of instances which are similar, I definitely did not consider it as a threat to sue.

"Q. (By Mr. Caughey): Mr. Houghton, has any representative of B & W, Inc., at any meeting which they may have had with you or in any telephone conversation or otherwise, ever threatened to sue Gulf Oil Corporation or any of its subsidiaries for any patents owned by that concern? A. No.

"Q. Reference was made in the memorandum which you just read, Dr. Vollmer's memorandum, which accompanied his letter of April 25, 1947, to remarks made by [162] either Mr. Decker or Mr. Wright that they did not intend to sue Gulf Oil Corporation. I believe there was also a further statement about damages for past infringement. You distinctly recall those remarks, independently of the memorandum, Mr. Houghton?

"A. I do indeed. I was very well pleased at the attitude, and was impressed by the statement of Mr. Wright that all he wanted was a fair share of Gulf's business, and while the notes say that they had no present intention to sue, or words to that effect, it was my impression from the way the conversation went, that there was no threat to sue.

"Q. You have testified as to the, we will call it, opinion—it may not have been an opinion—that

(Deposition of Alfred M. Houghton.)

you rendered relative to the use by Gulf Oil Corporation or its subsidiaries or any of its subsidiaries, of the coil scratcher which was submitted to representatives of the Gulf Research and Development Company in June, 1947, and which was again referred to in the meeting in Pittsburgh on September 8 and 9, 1947.

"As I understand your testimony, any opinion which you may have rendered relative to the use of such equipment by Gulf Oil Corporation was not based on any contract which might exist between the parties, such as the Hall-Wright agreement, or other parties, [163] but merely upon the fact that there seemed to be some danger under unfair trade practices or unfair competition, is that correct?

"A. That was the substance of my reaction at the time.

"I was relying upon a statement that the scratcher that you are referring to was an exact duplicate of the Weatherford scratcher, and I did not want to become involved in some case where there might be a suit on unfair competition or something of that sort, independently of patent questions, and in addition I have always had in mind the contract between Hall and B & W for settlement of the interference, and to interpret questions of infringement when there has not been a patent issued to Hall was a very difficult matter.

"I might add this——

"Q. In your—pardon me.

"A. I don't want to volunteer statements here.

(Deposition of Alfred M. Houghton.)

I would like to answer the questions as directly as possible.

"Q. That is correct.

"A. But after all, I have had occasion to go into this matter as thoroughly as possible from information which has been available to me, and have always been confronted from the standpoint of possible infringement [164] by Gulf Research and Development Company, and by Gulf Oil Corporation—I have always been confronted with the question of what will Hall eventually get allowed to him in one of his applications, and will the contract be interpreted in such a way as to give him exclusive rights under those claims. I have my opinion on that matter, but do not wish to express it. [165]

"Q. In your direct testimony, Mr. Houghton, you referred to the fact that there may have been some telephone conversations between you and me at various times, and I believe there was some question or statement relative to how the meeting happened to occur on April 6, 1949, by and between Mr. Wright and myself, on the one hand, and you, on the other.

"Isn't it a fact that I called you here in Washington, stated I was here on other matters, and I would appreciate the opportunity of talking with you if you could give me some time?

"A. I cannot state whether or not it is a fact, but it is a reasonable explanation, because I do not find in my file any letters or memoranda or tele-

(Deposition of Alfred M. Houghton.)

grams indicating that an appointment was made before that date.

"Q. Now, relative to any other telephone conversations that may have taken place, isn't it a fact that I called you a few days ago from Los Angeles, stated I had received a notice from Mr. Scofield that your deposition was going to be taken, and asked if there was any possibility of talking with you prior to the taking of the deposition?

"A. Yes, that is so.

"Q. Outside of those two telephone conversations which [166] I have related, can you recall any other conversations that I may have had with you over the telephone?

"A. No, I do not, but I am subject to changing my mind if somebody refreshes my recollection to the contrary.

"Q. And other than the meeting which I had with you on September 6, 1949, and the meeting what I had with you Saturday, last Saturday, were there any other meetings at which you ever were present where I was present?

"A. Not that I recall.

"Q. Mr. Wright calls to my attention the fact that I said September in my last question; it should have been April 6, 1949.

"A. I so interpreted it."

Mr. Scofield: I think it is September. That should have been corrected.

Mr. Doble: It should be September.

Mr. Scofield: Yes. I said "September."

(Deposition of Alfred M. Houghton.)

Mr. L. E. Lyon: No, you did not. I did. Mr. Caughey did.

Mr. Doble: "A. I so interpreted it.

"Further Examination by Mr. Scofield."

Mr. Scofield: What page?

Mr. L. E. Lyon: 79. Unless you want to read it.

Mr. Scofield: No, you can read it. [167]

Mr. L. E. Lyon: "Q. In the reading of Mr. Vollmer's memorandum of the conference or meeting in Pittsburgh on September 8, it is my recollection that you said that Wright had stated during that meeting that Mr. Maxwell acted as his attorney during the Hall settlement in California, is that correct?

"A. I don't remember saying that exactly.

"Q. Would you check the memorandum there which you have before you and see whether Mr. Wright represented to your group in Pittsburgh that Mr. Maxwell was his attorney?

"A. That was the memorandum of September——

"Q. 25th, it was.

"A. I read the memorandum in its entirety. I will now check again to see if it did make reference to that point.

"It says:

" 'A meeting was held with Mr. Maxwell, attorney for Wright, during which the agreement settling the interference was reached.'

"That is quoting from Mr. Vollmer's report referring to the settlement.

(Deposition of Alfred M. Houghton.)

"Q. Did Mr. Wright indicate during the meeting in Pittsburgh, or is there any indication in that memorandum, whether or not Hall was represented by [168] counsel at that settlement agreement which was made in California?

"A. I do not recall at that time there was any references made as to whether or not Mr. Hall had counsel representing him then.

"Q. There is some reference in Vollmer's memorandum that Wright intended to sue Hall before laches had run, is there not?

"A. Yes, there is some such statement.

"Q. Do you recall whether either Wright or Decker at that meeting indicated how long they intended to delay suing Hall on these patents?

"A. No, I don't recall that.

"Q. There also is, I believe, an indication in that Vollmer memorandum that Wright intended duplicating the Hall device, is there not?

"A. Yes, I think that there is a suggestion of that in there."

Mr. L. E. Lyon: Is there any "yes" there?

Mr. Doble: Excuse me.

Mr. Scofield: There is a "yes" right at the end.

Mr. Doble: "I think that there is a suggestion of that in there, yes."

"Q. And that was in September of 1947?

"A. Yes, and it had to do with the Venezuelan patent [169] situation. It seems they thought that since there would be no patent in Venezuela they could sell the device very much like Hall's there.

(Deposition of Alfred M. Houghton.)

I don't want to go any further in my recollection because I think this memorandum states substantially all the facts. If it had not I would have corrected it in some respects, and I did make one or two notes for correction, which were so immaterial that I did not point them out to anyone.

"For instance, at one point, where it says, 'Mr. Decker promised to provide Mr. Houghton with a copy of the Maxwell memorandum,' I have put on this Vollmer memorandum in the margin, apparently at a much later date, 'Not received.'

"Q. Prior to this time——

"A. May I continue?

"Q. Pardon me.

"A. I don't want to if you do not want me to.

"Q. I do not want to interrupt you. I had not realized you had not completed your answer.

"A. I was looking at another pencil note I made on this same memorandum. I made a note, 'The only purpose of the contract must have been to permit Hall to manufacture his specific form of scratcher under the broader claims issued to Wright.' [170]

"Aside from that there is no more in the memorandum except what I read to you, but I would like to explain that where I read portions starting with 'Note,' that these are notes made by Mr. Vollmer and were not things which were said by Mr. Wright or by Mr. Decker. Is that clear?

"Q. And prior to the date when this memorandum was furnished you, on September 25 or Sep-

(Deposition of Alfred M. Houghton.)

tember 26, 1947, Wright had already, to your knowledge, as early as June, supplied Gulf with samples of the coil type scratcher, hadn't he?

"A. I think he had."

Mr. L. E. Lyon: Continuation of the cross-examination by Mr. Caughey.

"Q. Mr. Houghton, Mr. Scofield interrogated you relative to whether or not the statement was made that Mr. Maxwell was the attorney for Wright. It is possible, is it not, that a statement might have been made that Mr. Maxwell was the patent attorney for Wright, instead of the attorney? Do you have any recollection as to that, independently of the memorandum?

"A. I have no recollection as to that. Mr. Vollmer made these notes. I did not question what he said. It may be his idea of what was said, but at [171] the time I did not know that there was any question as to whether or not Mr. Maxwell was the attorney for B & W, and so the matter had no importance to me.

"Q. You knew at that time that Mr. Decker was, at least, representing himself to be general counsel for the corporation?

"A. Yes, at that time I was so informed." [172]

* * *

October 1, 1952—11:00 o'Clock A.M.

* * *

Mr. Scofield: Your Honor, Mr. Lyon has handed to me a stipulation this morning, and overnight

I think maybe I clarified my thinking a little on this matter of rescission, but I question, yet, whether this is what we want here in the way of a stipulation. It is pretty close, but I think that we ought to straighten out the stipulation insofar as the terms and provisions are concerned.

(Said document was handed to the court.)

The Court: I will leave it to you gentlemen to do that.

Mr. Scofield: Well, there is one thing that I should like to have your views on, and that is, if this contract as we indicated yesterday is rescinded, that is, if it is rescinded as though a contract never existed and the parties are restored to their original condition when the contract was negotiated and executed, then how can there be a breach? It would seem to me that we better say that the contract is rescinded, that is, the contract is null and void, as of, say, the date that we signed our summary judgment or we filed these here, or as of the date of the stipulation, or something of that kind, rather than put it on the basis of a breach.

And, as I understand rescission of a contract under the [176] California code, it seems to me that neither party, if the contract is rescinded, would be entitled to damages, that is, the only recovery that either would be able to obtain would be what they would get in the way of restoration.

The Court: Yes, but it isn't always possible in an action for rescission, upon obtaining the rescis-

sion, to restore the parties precisely to the status quo ante the contract.

Mr. Scofield: Yes, of course, that is true.

The Court: And to the extent that rescission is impossible, courts of equity frequently award damages to compensate for the difference between the position of the party prior to the contract and at the time of rescission.

Mr. Scofield: Well, this stipulation indicates that the contract would be canceled as of the date of the first material breach, and then the party who had not breached the contract would be entitled to damages over that period. Now, it doesn't seem to me that that is quite consistent with my idea of what rescission is under the California code.

The Court: Of course, one of the grounds for rescission would be favorable consideration.

Mr. Scofield: Yes, that would be——

The Court: But under your stipulation, if you made a stipulation, under the stipulation as made, as I understand it, the parties agreed that that is one of the consequences [177] of a material breach, which would in effect constitute a favorable consideration which would warrant the innocent party rescinding the contract, canceling it——

Mr. Scofield: There is one other——

The Court: ——which is another way of saying, I suppose, it is one of the consequences, upon a material breach of the contract the innocent party may treat the contract as at an end.

Mr. Scofield: We are not in disagreement with regard to rescission and that each will be restored

insofar as your Honor is able to restore us to our original condition, but I question whether or not this matter of breach should be brought into it, because I don't believe that they are entitled at this time to anything in the way of, if you choose, damages or money for restoration, or anything of that sort, because, as you will recall, they canceled out or they dismissed their plea for cancellation with prejudice.

Mr. L. E. Lyon: And asking for damages.

The Court: Yes, with prejudice, but pursuant to stipulation, as to that waiver, the defendants might be relieved of that.

Mr. Scofield: That is the point. I don't know whether I am ready to waive that particular thing. That is, it seems to me that we have the case at the present time as it stands where they have canceled or they have dismissed their [178] pleadings for cancellation with prejudice, and that would seem to me to be the same as retraxit, as I have argued here before, that they then cannot come in and plead these matters that were dismissed out at the time that they dismissed their pleading for cancellation.

The Court: Unless the cause for cancellation arose subsequent to the retraxit. That would only apply as of the date on which the retraxit was made.

Mr. L. E. Lyon: Also, that decree of dismissal with prayer for cancellation of the contract is not a decree—they are not entitled to damages for any

breach that occurred in the contract. Those are two separate causes of action.

The Court: I don't suppose there would be any contention that that would be a waiver to the right to damages.

Mr. L. E. Lyon: Well, that is the contention that Mr. Scofield is now presenting. And also, as I understand it from the record, there was a stipulation entered into. Now, the stipulation that has been drafted is in accord, in exact accord, with the record of the stipulation that was stated on pages 15, 16, and 17, and the only thing that was asked after that was that I put the stipulation in a formal writing, which was already done.

Now, I want to know, of course, in a proceeding of this kind, in this case, whether we do or do not have a stipulation. As the record reads, that is the stipulation, in the [179] precise words in which it was stated. Now, if you are asking the court to be relieved of that stipulation, I want to know it. [180]

Mr. Scofield: Let us consider this over the noon period and, as I have indicated, when they came in in June of 1949, and dismissed their plea for cancellation they at that time also took out of the case all of those pleas for breach which they now say they may urge here.

Now, I think that when they made the dismissal or when they came in and dismissed their plea for cancellation, then all these objections, all of these things that they said we breached the contract by went out of the case.

Mr. L. E. Lyon: Oh, no.

Mr. Scofield: Because that is a final judgment. There is no question about that in this jurisdiction. It is a retraction pure and simple when the party comes in and dismisses his plea for cancellation. Then those things upon which he based his plea for cancellation are out of the case.

Mr. L. E. Lyon: Well, I think if your Honor will look for the Order of Dismissal of the Counterclaim for Cancellation, you will find that it was only an order dismissing as to the plea for cancellation of the contract and nothing else.

Mr. Scofield: That is all that it necessary. That is all that is necessary.

Mr. L. E. Lyon: That is not a dismissal of the cause of action for damages because of the breach.

Mr. Scofield: If there is any damages that would be assessed in connection with those pleas upon which you based [181] your cancellation plea, they are out with the cancellation plea.

Mr. L. E. Lyon: No. No such stipulation was entered into.

Mr. Scofield: There is no stipulation, then.

Mr. L. E. Lyon: Well, it was a stipulation then.

Mr. Scofield: No. It was an order of dismissal.

Mr. L. E. Lyon: Based on a stipulation.

Mr. Subkow: No, there was no stipulation.

Mr. Scofield: No stipulation.

Mr. Subkow: It was a motion.

Mr. Scofield: It was a motion by you to dismiss.

Mr. L. E. Lyon: I think the record will show it was dismissed by understanding. The plea for cancellation was withdrawn at that time.

The Court: The Order entered May 31, 1949. I have an Order on Defendants' Motion to Dismiss Counter-claim for Cancellation of Contract.

Mr. Subkow: Yes, it was a motion.

Mr. L. E. Lyon: What date was that, your Honor?

The Court: May 31, 1949. It reads:

"This Cause having coming on to be heard at trial, no testimony having been received, defendants' counsel having moved in open court that the Counter-Claim [182] for Cancellation of the Contract be dismissed, counsel for both parties having been heard, and the Court being fully advised in the premises,

"It Is Hereby Ordered that defendants' Counter-Claim for Cancellation of the Contract, Exhibit D to the Complaint, be and the same is hereby dismissed with prejudice.

"Dated this 25th day of May, 1949."

And stamped: "Judgment entered May 31, 1949. Docketed May 31, 1949."

The copy I have appears to have been prepared——

Mr. Scofield: By Mr. Caughey, I think.

The Court: "Lyon & Lyon—Reginald E. Caughey."

Mr. L. E. Lyon: Still I do not see how, your Honor, that can affect a stipulation that was entered into in open court yesterday.

The Court: Of course, that stipulation would be in effect a release from any waiver that would be involved in the so-called retraction.

Mr. L. E. Lyon: It was so stipulated at that time.

The Court: There apparently was no prayer for damages.

Mr. L. E. Lyon: In the original counter-claim that is right, your Honor.

The Court: In connection with the counter-claim for cancellation, in any event. [183]

Mr. Scofield: That is right.

The Court: There is a counter-claim for infringement, of course.

Mr. L. E. Lyon: That counter-claim for infringement was not dismissed. For the cancellation of the contract and nothing else.

The Court: Under the present state of the pleadings——

Mr. L. E. Lyon: We ask for damages for the breach of the contract.

Mr. Scofield: Yes, and they can't have it now, you see, because they have dismissed this cancellation plea and they have waived those breaches.

Mr. L. E. Lyon: No, we have not waived them.

Mr. Scofield: They were taken out of the case with their plea for dismissing the cancellation.

Mr. L. E. Lyon: That was argued at the time the new pleadings were presented, your Honor.

The Court: I do not know where you get the basis for saying they waived claim for damages by dismissing a counter-claim for cancellation. Do you have any authority for that?

Mr. Scofield: I think I have. That is, I think there is authority here that we put in.

The Court: It would be a question of election, would it not?

Mr. L. E. Lyon: And that is the basis upon which the [184] motion to dismiss the counter-claim was based. And I will read from the original transcript on page 63 of the transcript of May 25, 1949, when Mr. Caughey presented the motion.

"May your Honor please, in view of the fact that it would appear there is some question of election here and inconsistent remedies, and in view of the fact that I have also learned that Mr. Hall is no longer manufacturing the particular scratcher with the studs inside, in order to clarify the situation we wish at this time to move to dismiss the counter-claim for cancellation."

And that is the record upon which it was dismissed.

The Court: Now, is there any affirmative relief sought by the defendants under the present state of the pleadings other than counter-claim for infringement?

Mr. L. E. Lyon: Yes, a counter-claim for damages for the breach of the contract.

The Court: That is your counter-claim for declaratory relief?

Mr. L. E. Lyon: In the present pleadings.

The Court: In the Answer filed June 9, 1949, is that it?

Mr. L. E. Lyon: No.

The Court: That is the Answer to Plaintiff's First Amended Complaint.

Mr. L. E. Lyon: No. We have a subsequent

pleading, [185] your Honor, and the defendants' pleading at the present time is the Supplemental and Amended Answer which we made a motion for leave to file on July 31, 1951, and that motion was granted upon argument in open court subsequent to that date.

The Court: Yes. That superseded your——

Mr. L. E. Lyon: That superseded all of our other pleadings.

The Court: That is, as far as the defendants are concerned that superseded the Answer and the Counter-Claim filed July 9, 1949.

Mr. L. E. Lyon: The Order of the court allowing the amended pleadings to be filed is dated July 18, 1951.

Mr. Scofield: Of course, I think your Honor has stated the law when you say that a rescission is an election and they are estopped to ask for damages for breach after that.

The Court: The question when an election takes place if there is a voluntary retraction prior to judgment, generally speaking, there would be no election unless the claim was prosecuted to judgment and absent any change of position on the part of another party for damage. It might work an estoppel. The election is not effective, as a general rule, until the claim is prosecuted to judgment.

Mr. Scofield: I don't know whether I make myself clear, but the fact is that they in their original pleadings, that is, in their Answer to our original Complaint, alleged certain [186] breaches and upon

that, those breaches, they set up this counter-claim for cancellation.

The Court: Let us see if we can agree on this.

Mr. Scofield: Yes, sir; I will.

The Court: The pleadings on which we are now engaged in trial, the issues we are now trying are the issues raised by the First Amended Complaint of the Plaintiff, filed June 7, 1949, supplemented by Supplemental Pleading to Plaintiff's First Amended Complaint—Cancellation of Agreement, filed March 31, 1950, and the Defendants' Supplemental and Amended Answer to Plaintiff's Supplemental Pleading and Plaintiff's First Amended Complaint and Counter-Claim for Defendants.

Mr. L. E. Lyon: Filed July 18, 1950.

The Court: There is a motion for leave to file this, filed July 13th.

Mr. L. E. Lyon: Yes, and there is an order.

The Court: I was looking for the order.

Mr. L. E. Lyon: The order is dated July 18, 1951, your Honor.

The Court: Yes. Then subsequent to that, on September 10, 1951, the plaintiff filed——

Mr. L. E. Lyon: The Answer.

The Court: Plaintiff filed Plaintiff's Reply to Supplemental and Amended Answer of Defendants, etc.

Those are the pleadings, are they not? [187]

Mr. Scofield: Yes, sir.

Mr. L. E. Lyon: Yes, your Honor.

The Court: There is no question, as I understand it, but what Defendants' Supplemental and

Amended Answer of Defendants to Plaintiff's Supplemental Pleading and Plaintiff's First Amended Complaint and Counter-claim for Defendants supersedes all of the defendants' prior pleadings?

Mr. L. E. Lyon: None whatsoever, your Honor.

The Court: Is that agreed?

Mr. Scofield: Yes, sir; it is. The pleadings that you have enumerated are the pleadings that we now are——

The Court: And that they supersede the prior pleadings in the case?

Mr. Scofield: Yes, sir.

The Court: There is a Counter-claim. In addition to the Counter-claim for Infringement there is a Counter-claim of the Defendants for Declaratory Relief, is there not, which embraces a prayer for damages?

Mr. L. E. Lyon: Yes, your Honor.

The Court: That is the Counter-claim commencing at page 24 of the Defendants' Supplemental and Amended Answer.

Mr. L. E. Lyon: Yes, your Honor.

Mr. Scofield: Now, the controversy, your Honor, of the declaratory judgment that he is asking is starting on paragraph X on page 28. There he outlines what the controversy is.

Mr. L. E. Lyon: That is only one of them. [188]

Mr. Scofield: Now, his prayer for damages is over in the prayers 20 and 22.

The Court: Now, you are referring to pages or paragraphs?

Mr. Scofield: Paragraphs, on page 35, and they

have nothing to do with the breach or the declaratory relief action.

Mr. L. E. Lyon: They have. That is your interpretation.

The Court: Of course, there are extensive prayers on behalf of the defendants and counter-claimants.

Mr. Scofield: That is right.

The Court: And, of course, under the rule, if the facts showed that they are entitled to certain relief, the court could take jurisdiction and grant it, even though not prayed for.

Mr. Scofield: What I originally brought up, of course, was the question of whether or not we should here in this stipulation mention breaches. That is, if there is a rescission of the contract, it is enough to say that the contract is null and void as of the date when the motions were filed or the date when the judgment is handed down. But rescission there means to me that the contract is wiped out in toto and the parties are restored to their original condition as if no contract ever existed.

Mr. L. E. Lyon: That is the prayer in the amended complaint and it is also in the stipulation that was entered into in open court. [189]

Mr. R. E. Lyon: It was stipulated.

The Court: Well, do you wish to be relieved of that stipulation, Mr. Schofield?

Mr. Scofield: Well, I would prefer that the stipulation read that there was a rescission of the contract as of the time when the summary judgment pleas were made.

The Court: Do you wish to be relieved of the stipulation made yesterday?

Mr. Scofield: Yes, I would prefer to, and have it in that form. We are going on from here to introduce evidence, and I don't believe that it is proper for them or for us to claim damages here where the contract is rescinded.

The Court: It may not be rescinded.

Mr. Scofield: Well, that is another point.

The Court: I will relieve you from the stipulation. I will not accept any more stipulations bearing on the legal consequences here. And your motion to be relieved will be granted.

Now, we are going on from here and we are going to try this case and I am going to award justice according to legal consequences, from the facts as they appear.

I told you gentlemen many times that if these parties are businessmen worthy of the name, they ought to settle this controversy, because they can do a much better job of it than this court can do, but someone is going to be hurt in this [190] litigation, hurt financially and maybe hurt substantially.

And I will not hear any more stipulations changing the issues.

Now, we are going to try the issues as raised by these pleadings. Just proceed.

I am going to render judgment as it appears to me—and it may be very harsh, but I shall render judgment in accordance with the law and in accordance with the equities as I see them. That is what this court is here for, and when the parties cannot

settle the matter themselves, then it will be settled here.

Let us proceed, gentlemen, and have no further discussion about shortening this matter. We will just labor through it, and when you are through, you submit it to the court and the court will decide it.

Mr. L. E. Lyon: Your Honor, in view of the withdrawal of the stipulation of yesterday, the defendants would like to be relieved, also, of their election made on May 25, 1949, so that the complete issues of this case may be tried, and that is we made an election and offered a judgment based on that election, and a judgment was entered as of May 31, 1949, and we would like to restore our pleadings for cancellation of the contract.

The Court: Do your present pleadings permit that?

Mr. Scofield: No, I don't believe so. [191]

Mr. L. E. Lyon: No, I don't believe the present pleadings would do it, because I was still relying with faith on our election made before, but, in view of the withdrawal of the stipulation of yesterday, I would like to withdraw our pleading for restoration of the contract. I would like to be relieved from that election.

Mr. Scofield: Well, I don't see how they can, at this time, withdraw that pleading, since the order was made and the plea for cancellation was dismissed with prejudice.

Mr. L. E. Lyon: I think we can withdraw it and reframe the issues at any time before final judg-

ment in this case, if based on an election. I think it is within the power of this court to relieve us of that election.

Mr. Scofield: Well, I at the same time then, your Honor, will renew my motion that I made here in 1951 to cancel the contract and rescind it and restore the parties, put them in their original status.

The Court: Your second cause of action requests that?

Mr. Scofield: That is right.

Mr. L. E. Lyon: I have no objection to that.

Mr. Scofield: And I wish to renew that motion at this time and I understand it is agreeable to them. So, the contract, if your Honor is agreeable to the motions that we have made and did make back there in 1951, will be rescinded, that is, it will be made null and void as of the date when [192] those pleas were made, the motions on behalf of the plaintiff and defendants, and the contract will be rescinded.

The Court: The reasons that I denied your motion for summary judgment upon that ground, Mr. Scofield, are that it is impossible for me to accept anything short of a stipulation providing (1) that by mutual agreement of the parties the agreement is to be rescinded or canceled; (2) the date as of which it is to be rescinded and canceled, and (3) the consequences of the rescission and cancellation, the consequences which would ensue upon a decree cancelling the agreement.

Now, if you gentlemen can agree upon that, that

is another matter. But at the present time I have before me a motion of the defendants to vacate the order entered May 31, 1949, entitled "Order on Defendants' Motion to Dismiss Counter-Claim for Cancellation of Contract." In order to be equitable in the matter, I shall condition your relief from your stipulation of yesterday upon your consent that this order of May 31, 1949, be vacated.

In other words, if you wish to be relieved of your stipulation of yesterday, then you shall consent to relieve the defendants of any consequences of this order.

Mr. Scofield: Well, of course, I am given no preference. Under those conditions, I will accept the stipulation.

The Court: Then, as I understand it, both parties are relieved, at the request of the plaintiff, of the stipulation [193] made yesterday with respect to cancellation of the contract, the stipulation of yesterday which has been discussed here this morning, and, by stipulation, the order of May 31, 1949, dismissing the defendants' counter-claim for cancellation of the contract, is vacated.

Mr. Scofield: And then the plea for dismissal of their cancellation remains in the pleadings, that is, they are estopped——

The Court: No. Then that pleading has been superseded. That pleading has been superseded. The order is merely set aside so that any legal consequences which might flow from it are obviated.

Mr. Scofield: Yes.

The Court: Any consequences from the fact

that it was a dismissal with prejudice, that is what the defendants wish to be relieved of, I take it, is that correct?

Mr. L. E. Lyon: That is right.

Mr. Scofield: But they aren't relieved of that at the present time. These new pleadings do not relieve them of that.

The Court: But the order of May 31, 1949, is vacated, which leaves the pleadings superseded by the later amended answer and supplemental answer filed July 18, 1951.

Mr. L. E. Lyon: At the same time, your Honor, with that order having been entered, we will ask the court for leave to re-establish our plea for cancellation set forth in the [194] pleading which was then dismissed with prejudice.

The Court: Well, you will have to have a new pleading.

Mr. L. E. Lyon: I will supplement it with a new pleading, immediately, just restating the one that was dismissed at that time.

Mr. Scofield: I think, your Honor, it would be well for us to brief this point.

The Court: Of course I should enforce the rule in this case and dismiss everything and let you gentlemen file some pleadings that are brief enough to be within the rule. The pleadings on both sides are unnecessarily verbose, prolix and involved.

The defendants may file an amendment. How soon can you have it ready?

Mr. L. E. Lyon: I will have it ready tomorrow morning.

The Court: And how soon can you answer?

Mr. Scofield: We will answer the day after, if it is not too long.

The Court: Leave is granted to file an amendment to the supplemental and amended answer, an amendment which will embrace a counter-claim for cancellation of the contract of September 15, 1944, by the defendants, and the plaintiff may have a day within which to serve and file an answer to it.

Mr. Scofield: There is one thing I would like to inquire about. If we have now stipulated that the contract is [195] canceled——

Mr. L. E. Lyon: We haven't stipulated to anything.

The Court: There is no stipulation about the cancellation of the contract.

Mr. L. E. Lyon: You have withdrawn that.

Mr. Scofield: Oh, well, here——

The Court: You asked to be relieved of that.

Mr. Scofield: I know, but we went back into this matter when you were talking to them about the question of whether or not they now could come in and relieve themselves, that is, cancel out this plea, the dismissal of their cancellation plea in this original pleading.

The Court: Well, the record will speak for itself, Mr. Scofield. I am unable to follow you on that. You asked to be relieved of the stipulation of yesterday.

Mr. Scofield: Yes, sir.

The Court: With respect to cancellation. My condition is that plaintiff is relieved from that

stipulation, upon your stipulation that the order entered May 31, 1949, dismissing, with prejudice, the defendants' counter-claim for cancellation of the contract, be vacated. That was done pursuant to your agreement. Now, as the matter now stands, the parties are relieved from the stipulation made yesterday with respect to cancellation. The defendants are relieved from dismissal with prejudice of their counter-claims for cancellation. The [196] defendants are granted leave to serve and file, but not later than tomorrow, an amendment to their supplemental and amended answer seeking cancellation of the contract. And the plaintiff may reply to that within one day thereafter.

Mr. Scofield: And then I renewed my motion, which was made——

The Court: Motion for summary judgment?

Mr. Scofield: No. A motion for cancellation.

The Court: When was that made?

Mr. Scofield: That was made in connection with this summary judgment motion for cancellation of the contract.

The Court: That was a motion for summary judgment of cancellation.

Mr. Scofield: Of cancellation.

The Court: That has been denied, and I will not entertain it again. We are going to try this case. [197]

* * *

VERNON A. PETERSON

called as a witness by the defendants, being first sworn, was examined and testified as follows:

The Clerk: State your name, please.

The Witness: Vernon A. Peterson.

Direct Examination

By Mr. L. E. Lyon:

Q. What is your occupation, Mr. Peterson?

A. I am a member of the Bar of the State of Illinois and am with the firm of Langer, Perry, Barton & Langer in Chicago, Illinois, specializing in the practice of [198] international patent and trade-mark law.

Q. How long have you been so associated?

A. I have been with the firm I just mentioned since 1932.

Q. What was your business before that?

A. For three years prior to that time I was an industrial engineer with the Public Service Company of Northern Illinois, a utility company.

Q. Will you explain briefly to the court what you mean by engaged in the international practice of patent law? I believe you used those expressions.

A. Well, we represent patent lawyers or companies having patent departments in the United States who desire patent and trade-mark protection in foreign countries. We receive instructions to file applications from patent lawyers in the United States and send applications, patents and trade-marks to associates that we have in various

(Testimony of Vernon A. Peterson.)

foreign countries who represent us in those countries, and they in turn file and prosecute patent applications in foreign countries on our behalf for American applicants.

Q. And in that capacity is it necessary that you know the patent laws of the different countries of the world? A. Yes.

Q. Is that particularly true with respect to time and requirements for the filing of [199] applications? A. Yes.

Q. And your position, then, is advising people like myself and other patent lawyers over the United States as to when they may file a legal application in a foreign country; is that correct?

A. Yes.

Q. And in that capacity you are familiar with the laws of Mexico? A. Yes.

Q. Trinidad? A. Yes.

Q. Venezuela? A. Yes.

Q. Brazil? A. Yes.

Q. Colombia? A. Yes.

Q. Peru? A. Yes.

Q. Canada? A. Yes.

Q. Iraq? A. Yes.

Q. And Iran? A. Yes. [200]

Q. Is there any general rule which may be stated with respect to time for the filing of an application in these particular countries which I have named?

A. It is difficult, Mr. Lyon, to state any general rule because, although the laws of the various coun-

(Testimony of Vernon A. Peterson.)

tries can be classified generally in different groups, there are variations from country to country which make me hesitate to give any general statement.

Q. All right. Let us take them one at a time, then. What are the requirements of the Mexican patent law with respect to the filing of an application for a patent?

A. In Mexico an applicant must file a patent application before there has been printed publication anywhere of the subject matter of the invention and before there has been public use anywhere of the invention. There is just one proviso I must make in that respect. Mexico is a member of the International Convention of which a number of countries are members, one of the provisions of which is that if an applicant files a patent application in his home country, he receives the benefit of that filing date if he files in one of the other convention countries within one year of the filing in his home country.

Q. That is, a United States citizen, then, the United States being also a member of that International Convention—— A. Yes. [201]

Q. ——in filing an application in the United States, he may have the benefit of his United States filing date if he files in Mexico within a year of his United States filing date?

A. That is correct.

Q. Is that what I understand?

A. Yes. [202]

Q. What are the provisions of the patent law of

(Testimony of Vernon A. Peterson.)

Trinidad with respect to time for filing an application?

A. In Trinidad an applicant must file a patent application before there has been public use of the invention in Trinidad and before there has been printed publication of the invention in Trinidad.

Q. In these particular countries——

A. Pardon me, Mr. Lyon, may I just add one more statement to that?

Q. Go ahead.

A. Trinidad is also a member of the International Convention, and the statement made with respect to the Mexican filing of application also applies as to Trinidad.

Q. Now, what are the requirements of filing in Venezuela?

A. In Venezuela an applicant must file a patent application before public use of the invention in Venezuela and before printed publication of the invention anywhere; however, there is a provision in the Venezuelan law whereby a patent can be filed as a patent of confirmation based upon an issued foreign patent of that applicant in another country, provided it is filed before public use of the invention in Venezuela. [203]

* * *

Q. (By Mr. Lyon): Mr. Peterson, assuming that there was a Trinidad patent issued on the same invention on October 30th of 1946, is there any method under which a Venezuelan patent could be obtained subsequent to that date?

(Testimony of Vernon A. Peterson.)

A. Yes, the Venezuelan patent law, as I pointed out, provides for what are sometimes termed patents of confirmation, and the patentee of the Trinidad and Tobago patent, by filing a legalized certified copy with his application for patent in Venezuela, in the Venezuelan Patent Office, could obtain a patent of confirmation in Venezuela based on the Trinidad and Tobago patent.

Q. That is under Article 17?

A. 17 or 18.

Q. 17 or 18 of the Venezuelan patent laws. I hand you a copy of the translation and ask you to check that.

The Court: That is a copy of Exhibit R?

Mr. L. E. Lyon: That is a copy of Exhibit R, your Honor. [208]

A. Yes. Article 17 is the article providing for patents of confirmation, and Article 18 provides that such application must be accompanied by a certified and legalized copy of the letters patent issued in the country of origin.

The Court: And, as I understood you, that filing or confirmation of patent must be made prior to any public use of the invention in Venezuela?

The Witness: Yes, your Honor.

Q. (By Mr. L. E. Lyon): And for an original patent, under Article 1 of the Venezuelan patent law, it must be filed in Venezuela before public use anywhere or publication anywhere, must it not?

A. Before public use in Venezuela and before printed publication anywhere. [209]

* * *

(Testimony of Vernon A. Peterson.)

A. In Brazil, an applicant must file a patent application before public use of the invention in Brazil and before printed publication of the invention in Brazil. However, if there has been printed publication outside of Brazil, that is, in any other country, an application can be filed within one year of printed publication elsewhere.

Brazil also is a member of the International Convention, and the remarks I made concerning filing in Mexico under the International Convention and in Trinidad and Tobago, also apply with respect to Brazil.

The Court: Is Venezuela a member of the International Convention?

The Witness: Venezuela is not a member of the [211] International Convention.

Q. (By Mr. L. E. Lyon): I assume that where you do not mention that a country is a member of the International Convention, or you do not mention the possibility of filing an application for confirmation, that those just do not exist in those countries, am I correct in that?

A. Yes. Now, I can just make one remark, because so far with respect to that in Mexico there is no provision for patent confirmation. In Venezuela, no use was stated.

In Brazil, there is no provision for patent of confirmation, nor is there such a provision in Trinidad or Tobago.

Q. What are the provisions of the patent law in Colombia?

A. In Colombia, a patent application must be

(Testimony of Vernon A. Peterson.)

filed before printed publication anywhere or public use anywhere.

Q. Is a patent of confirmation possible there?

A. There is provision in Colombia for a patent of confirmation which must be filed before there is public use of the invention in Colombia.

Q. Is Colombia a member of the International Convention? A. No.

Q. What are the provisions of the laws of Peru with respect to the filing of an application for patent?

A. In Peru, an applicant must file a patent application before public use of the invention anywhere and before [212] printed publication of the invention anywhere.

There is no provision for patent of confirmation in Peru, and Peru is not a member of the International Convention.

Q. What are the provisions of the patent laws of Holland?

A. In Holland, an applicant must file a patent application before printed publication anywhere of the invention and before public use anywhere of the invention.

There is no provision for patent of confirmation in Holland.

Holland is a member of the International Convention, and the remarks with respect to Mexico and the International Convention filing apply also to Holland.

(Testimony of Vernon A. Peterson.)

Q. What are the provisions of the patent laws of Iran?

A. In Iran, a patent application must be filed before printed publication anywhere of the invention and before public use anywhere.

There is provision in Iran for filing of a patent of confirmation based on an issued patent elsewhere, which must be filed, however, before public use in Iran.

Iran is not a member of the International Convention.

Q. What are the provisions of the patent laws of Iraq?

A. In Iraq, a patent application must me filed before public use anywhere and printed publication anywhere of invention. [213]

Iraq also has provision for filing a patent of confirmation, which must be filed before public use of the invention in Iraq.

Iraq is not a member of the International Convention.

Q. Where a patent of confirmation may be filed, is it true that a certified copy of the basic patent must be filed?

A. Are you talking generally about countries?

Q. Generally.

A. That doesn't apply in every country.

Q. In the countries that we have discussed, does it apply to all of them?

A. It does not apply in Iran, or let me say, the

(Testimony of Vernon A. Peterson.)

law in Iran is silent as to whether or not a certified copy must be filed.

Q. And in the other countries?

A. It applies in Chile, Venezuela, Iraq. The patent law in Colombia is silent as to the filing of a certified copy.

Q. Now, what are the requirements of the patent laws of Egypt with respect to the filing of an application?

A. The Egyptian law was just recently enacted, Mr. Lyon, and so now——

Q. Let us go back to 1944.

A. In 1944, protection was obtained in Egypt by filing a patent application in the Mixed Courts of Alexandria. They had no patent law as such, but patent protection could be [214] obtained by filing in the Mixed Courts.

Q. Have the laws of any of these countries that you have mentioned changed in any way since 1944, with respect to the filing of these applications, the dates of filing, the time for filing?

A. I think we would have to review country by country.

Q. Well, in Mexico? A. No.

Q. In Trinidad? A. No, sir.

Q. In Venezuela? A. No, sir.

Q. In Brazil?

A. Not with respect to filing patents.

Q. Colombia? A. No, sir.

Q. Peru? A. No, sir.

Q. Holland? A. No, sir.

(Testimony of Vernon A. Peterson.)

Q. Iran? A. No, sir.

Q. Or Iraq? A. No, sir.

Q. What are the provisions of the Canadian patent laws? [215]

A. In Canada, an application must be filed within two years of public use or sale in Canada and within two years of printed publication of the invention anywhere.

Canada is a member of the International Convention, so the remarks with respect to Mexico apply also with respect to Canada, despite the statements I just made concerning time limits for filing in Canada; if an application is filed, for example, in the United States, and then, more than 12 months later, it is filed for in Canada, it is too late to file—the Canadian application thus filed would be invalid if a corresponding foreign patent issued to the patentee or to the applicant in another country, even though there may not have been two years public sale or use in Canada. In other words, let me state it in this way: Unless a patent application is filed in Canada under the provisions of the International Convention, the Canadian application must be filed before the applicant's patent, corresponding patent, in any other country issues, even though there may be less than two years of public use or two years publication of the invention. [216]

Q. That is, unless it is filed under the Convention, filed after a patent issues in any country for the same invention, it is invalid, is that it?

A. That is correct. [217]

* * *

(Mr. Scofield reading the questions and Mr. Subkow reading the answers from the witness stand from the Teplitz deposition.)

DEPOSITION OF A. J. TEPLITZ

Mr. Scofield:

"Q. Please state your name.

"A. A. J. Teplitz.

"Q. Where do you reside, Mr. Teplitz?

"A. In Penn Township, Allegheny County, [222] Pittsburgh.

"Q. What is your address?

"A. Hulton Road, R. D. 2, Verona, Pennsylvania.

"Q. How are you employed at the present time?

"A. As a research engineer at the Gulf Research and Development Company.

"Q. Briefly state your educational qualifications.

"A. I took a B.S. degree at the University of Kansas, and graduate work at the University of Pittsburgh.

"Q. After leaving college where was your employment?

"A. At the National Cement Company in Birmingham, Alabama—or rather, Ragland, Alabama.

"Q. Give the employment you had subsequent to that, up to the time you took your present job with the Gulf.

"A. Let's see. I was a chemical engineer at the Continental Oil Company for a year and a half, before joining the Gulf, at the Mellon Institute.

"Q. In the latter part of 1945 were you assigned

(Deposition of A. J. Teplitz.)

some special work by the Gulf Research organization in connection with conditioning oil wells?

"A. In connection with the study of [223] cementing, it was just a continuation of some former work I had been doing on cementing.

"Q. When did you start that work?

"A. As near as I can recall, it was in '43 sometime.

"Q. And did you continue on with that work continuously, or was it spasmodic?

"A. It was periodic, whenever a job would come up, I traveled from Pittsburgh to the field and then back.

"Q. Where was this work done, in what fields, what oil fields?

"A. Mostly in the fields in the Delta area of Louisiana, Quarantine Bay, West Bay, and Grand Bay.

"Q. When did you first meet Mr. Kenneth Wright, who is here in the room?

"A. I think it was in the early part of 1946, sometime, probably February.

"Q. When did you meet Mr. Jesse Hall, Sr., for the first time?

"A. That was sometime within a month or two later than that, the time I met Mr. Wright.

"Q. Do you recall the occasion when you met Mr. Wright and what was discussed at the time you first met him? [224]

"A. It seems to me that we had lunch together, and we were considering trying out some scratchers

(Deposition of A. J. Teplitz.)

in a cementing job, and he outlined to me the method that he employed in the use of scratchers and described his equipment.

"Q. Where did this meeting take place, do you recall?

"A. As near as I can recall, it was at the Houston Club in Houston.

"Q. As a result of that meeting, did you try out those scratchers that Mr. Wright recommended?

"A. No, we didn't.

"Q. What occurred to cause you not to use his equipment?

"A. Within a week or two I met Mr. John Hall, who described his—or the Weatherford brand of equipment, and their method of employing those, and I was more favorably impressed with the Weatherford equipment.

"Q. Where did you first use the scratcher equipment in connection with the work that you were doing for Gulf?

"A. In the Quarantine Bay field in Louisiana.

"Q. And about what date was that? That is, approximately, I don't care about the exact [225] date. A. I guess it was in March.

"Q. Was that first well run on Weatherford equipment? A. Yes, it was.

"Q. What year? A. That is 1946.

"Q. Who worked with you on that particular job?

(Deposition of A. J. Teplitz.)

"A. Mr. Hassebroek of the Halliburton Company, Mr. Jesse Hall, Sr., and another Mr. Hall, who I understand was a cousin of the senior Hall.

"Q. After running this first well in Quarantine Bay were there subsequently any other wells that were run with this procedure?

"A. Yes, quite a number of them.

"Q. Over what period of time?

"A. Well, up to the present, they are still being run.

"Q. I wish you would indicate how many were run before you finally gave this paper before the A.P.I.

"A. As near as I can recall, about five jobs.

"Q. All on the Gulf Company's? A. Yes.

"Q. Mr. Vollmer has furnished me with a mimeographed preprint which is entitled, 'An Investigation of Oil Well Cementing.' Can you identify that? [226]

"A. Yes, that is the paper I gave at the A.P.I. meeting, at the date specified.

"Q. Where was that meeting held?

"A. Shreveport, Louisiana.

"Q. On what date?

"A. It says May 17th and 18th. I don't recall on which day the paper was given. One of those two days.

"Q. Without reference to the particular text of the article, state for the record just what the article covers.

"A. The article covers some of the results of

(Deposition of A. J. Teplitz.)

our research on squeeze cementing, and then describes what was done to improve the primary cementing technique." [227]

* * *

Mr. Scofield: "Q. There was offered in the California case a letter dated June 13, 1946, as Plaintiff's Exhibit 45. This letter is addressed to Mr. A. J. Teplitz, and was sent you by Mr. Wright. This particular letter which is in evidence is a photostat of a carbon copy. I put that letter before you and ask you whether or not you recall receiving that letter from Mr. Wright?

"A. (Examining): Yes, I do.

"Q. In the body of the letter, Mr. Wright makes reference to the paper which you gave before the A.P.I., does he not, at Shreveport? A. Yes."

Mr. Scofield: Now skip to page 12.

"Q. This paper marked Plaintiff's Exhibit 63 was given in Shreveport in the middle of May, 1946. How much longer did you work on the Gulf Coast on these cementing problems, up to the time that you went to Venezuela?

"A. Let's see. I left the Gulf Coast sometime in the fall of that year, '46, I think it was probably [230] October. Up until that time I had been working more or less constantly on cementing there. I came to Pittsburgh, and I don't recall at this time whether I made a subsequent trip down to the Gulf Coast before going to Venezuela. I rather think that I did, but I am not sure of that.

"Q. You might state for the record when you left for Venezuela, so as to fix that date.

(Deposition of A. J. Teplitz.)

"A. Either February or March of 1947.

"Q. And you worked off and on on the Gulf Coast from May, the middle of May until the time you went to Venezuela?

"A. As I say, until October of the preceding year, October of 1946, I was down there constantly. And then came back to Pittsburgh and worked out of Pittsburgh, and I don't recall at this time whether I made a subsequent trip back to the field before leaving for Venezuela."

Mr. Scofield: Now to page 14.

"Q. In the California suit there is in evidence as Plaintiff's Exhibit 19 a wire which was sent by Mr. Barkis to Dr. Foote, and in this wire there is this statement: 'These cementing procedures' (referring to the cementing procedures which you had used on the Gulf Coast)—— [231]

"Mr. Caughey: Now that is objected to.

"Mr. Scofield: Mr. Reporter, put that in parentheses.

"Mr. Caughey: That is objected to as a voluntary statement and not supported by any testimony that this witness has given. And I am referring specifically, you said, these procedures, as referring to those on the Gulf Coast.

"Mr. Scofield:

"Q. I am reading from the Exhibit: 'These cementing procedures follow identically the patented B & W method outlined to Teplitz by our Mr. Wright.' Do you recall the cementing procedure that was outlined to you by Mr. Wright?

"A. In a general way.

(Deposition of A. J. Teplitz.)

"Q. Briefly state what it was.

"A. It was the use of the B & W scratcher placed at intervals opposite the producing zone, placed on the casing so they would end up at intervals opposite the producing zones, and reciprocation of the casing during cementing.

"Q. Now was that cementing procedure disclosed to you by Mr. Wright prior to the field investigations that you made on the Gulf Coast?

"A. No, not prior to '43, the field [232] investigations were begun sometime in 1943, and this was in '46.

"Q. And Mr. Wright disclosed the method which you have just described in 1946? A. Yes.

"Q. When in 1946?

"A. Well, as I said, the first time that I met him in 1946. I have mentioned earlier, I think, previously I mentioned that is was sometime around February, or January or February, of 1946.

"Q. Did you use that Wright procedure in 1946? A. No.

"Q. On any occasion? A. No.

"Q. How long were you in Venezuela?

"A. About two months.

"Q. Briefly state the purpose of your trip to Venezuela?

"A. To attempt to apply the methods which had been developed in the States to the cementing problem in Venezuela.

"Q. Did you receive any word while in Venezuela from the Gulf Oil Company about the wire

(Deposition of A. J. Teplitz.)

that has just been referred to, that was sent Mr. Foote?

"A. Let's see, what wire was that? [233]

"Q. That is the wire of April 10th, I believe it was, 1947. You can read the wire, I put it before you.

"A. I believe I did recive a copy of that.

"Q. Did you do anything about this wire before you returned to the States?

"A. I don't recall that I had anything to do with the wire except as a matter of information to me.

"Q. When you returned to the States, do you recall a conference that was held in Pittsburgh, at which time Mr. Hall and one of his sons was present? A. Very vaguely, yes.

"Q. You attended the conference?

"A. Yes.

"Q. What is your recollection of what was discussed at that particular conference?

"A. Well——

"Mr. Caughey: Just a moment. I object to the question unless you lay the proper foundation as to the time and place and the parties present.

"Q. You have said that you were present at the conference, have you not? A. Yes.

"Q. And you have also said that Mr. Hall and one of his sons were present? [234] A. Yes.

"Q. Who else was present, to your recollection?

"A. If I remember, Dr. Westcott and Mr. Vollmer and Mr. Kennedy and myself.

(Deposition of A. J. Teplitz.)

"Q. And what is your recollection of what was discussed at this conference?

"A. The course of the work that had been done in Venezuela, from which we had just come, and the patent right to the method of cementing wells with scratchers, the method of applying scratchers to wells.

"Q. The Wright method patent, you mean?

"A. Yes.

"Q. Do you recall anything else that was discussed during that meeting?

"A. I believe something was said about the agreement, the Hall-Wright——

"Q. What agreement was that?

"A. Between Wright and Hall, on the licensing of the scratchers, on Mr. Hall's right to use his scratchers.

"Q. Do you remember any of the particulars of that discussion?

"A. No, I don't, it is all very vague to me right now.

"Q. Do you have a recollection of a [235] second conference which was held in June of 1947 in Pittsburgh?

"A. If I knew the parties I might have a recollection. I don't recall it just by date.

"Q. Mr. Wright testified in a deposition prior to the California trial——

"Mr. Caughey: Why don't you tell him who was present and ask him if he remembers it?

"Q. ——that a conference was held in Pitts-

(Deposition of A. J. Teplitz.)

burgh attended by Messrs. Wright and Barkis, Dr. Westcott, Mr. Vollmer, Dr. Kennedy, and Mr. Teplitz. Do you recall that conference? A. Yes.

"Q. Do you recall what was discussed at the conference that was held in June of 1947 with these men present?

"A. As I recall, we discussed the two types of cementing equipment, the two different brands of cementing equipment, pretty much in detail. And I think at that time Mr. Wright brought in—brought before the meeting—their patent method, method patent.

"Q. Do you recall at that conference whether or not the method proposed by Wright and Barkis was discussed, and their equipment was discussed, and its use? [236] A. Yes.

"Q. What is your recollection about that?

"A. That it was discussed, those items that you mentioned were discussed.

"Q. Now Wright stated in his deposition before trial in the California case that at that June meeting Gulf was told that in B & W's opinion, Hall was an infringer of the method patent of Wright; do you recall that?

"A. Well, I heard that on a number of occasions, and I don't recall it mentioned specifically in that way, except I knew the patent was discussed at the meeting.

"Q. You say that you had heard that on a number of occasions. Had you heard that before the June meeting in 1947?

(Deposition of A. J. Teplitz.)

"A. Other than that—I believe that was in the wire that you have just pointed out, and——"

Mr. Scofield: Skip down to question 106.

"Q. Did Barkis ever tell you that Gulf's use of this Hall equipment was an infringement of the Wright method patent? A. Yes."

Mr. Scofield: Page 21. At this point I requested that the reporter [237] "mark the letter dated June 30, 1947, addressed to Gulf Research and Development Company, attention of Mr. B. B. Westcott, signed by K. A. Wright, as Plaintiff's Exhibit No. 64 for identification."

And that, your Honor, was offered yesterday, I believe. And we offered, or the photograph of the Wright scratcher that was sent with that letter was offered, but I do not believe the scratcher itself was offered. I think it was marked as 88. [238]

* * *

"Q. I put before you a letter which has been furnished by Dr. Westcott, which has been marked Plaintiff's Exhibit 64 for identification"——

We will leave that out because that has already been offered.

Down to Q. 113.

"Q. Was that in the meeting of June 17, 1947, do you recall?

"A. I don't remember the date but I think it was.

"Q. Did you see these coil spring type scratchers which were furnished according to this letter?

"A. Yes, I did.

(Deposition of A. J. Teplitz.)

"Q. In what regard were they similar or different to the Weatherford scratcher, do you recall?

"A. Practically duplicates, for all practical purposes.

"Mr. Caughey: That is objected to unless there is some statement on the record as to what is meant by a Weatherford scratcher. [239]

"Q. What Weatherford scratcher were you referring to in that last answer?

"A. Well, the scratcher with the coil springs and the bristles coming out of the collar through openings in the collar, and fastened—well, I have forgotten the fastening, in my recollection it was a rivet type of fastening, inside of the collar.

"Q. I put before you an advertising sheet which is in evidence in the California case as Plaintiff's Exhibit 5. I call your attention to the cut of the scratcher which is just below the center of the sheet on the right hand side. How did the scratcher that was sent on by B & W compare with the scratcher shown here?

"A. It was quite similar.

"Q. In what regard?

"A. In every regard that I can see in this illustration.

"Q. Well, did it have a collar such as is shown there? A. Yes.

"Q. Were there wires extending out non-radially from the collar? A. Yes.

"Q. And were these wires mounted inside of the collar? [240] A. I believe so.

"Q. Do you know how they were anchored in the B & W type coil type scratcher?

(Deposition of A. J. Teplitz.)

"A. I believe they were the same type of anchor.

"Q. What, by the rivets? A. By rivet.

"Q. Did you ever use any of those scratchers or scratchers like the ones that were sent on by B & W in any of the work that you did for Gulf?

"A. No."

Mr. Scofield: Then Q.126.

"Q. I show you two articles that appeared in the Oil and Gas Journal of September 9, 1948, and September 16, 1948. Referring to the first article, by A. J. Teplitz, can you identify that as one that you wrote? A. Yes. [241]

"Q. Briefly what does the article cover?

"A. As it states, it is a review of the casing cementing and perforating practices, and contained results of our—some of the results of our researches on the cementing of casing with the new scratching technique, and some of the difficulties in perforating the cement job obtained with the new technique.

"Q. Over what period of time does the article cover?

"A. Let's see, I'll have to look at that and see. Well, it would be from the first use of the scratchers by us in connection with this research program, which was in 1946 sometime, to the date this paper was given. This paper was actually given at a meeting of the—a supervisors meeting in Houston, the date of which I am not sure, but I believe it was in June of 1948.

"Q. It appeared in the Oil and Gas Journal September 9, 1948, did it not?

(Deposition of A. J. Teplitz.)

"A. That is right.

"Q. What is the second article which is in the pamphlet?

"A. The second article I had nothing to do with but it describes essentially the work as we have been doing it, and during the trip to Venezuela.

"Q. Did you have anything to do with the work that [242] is described in the article?

"A. Yes. Yes, I helped out on the work as a representative of the Research Department.

"Q. Who is this D. H. Stormont who appears to be the author of the article?

"A. I think he is on the editorial staff of the Oil and Gas Journal. I don't know him but I have seen his name in print several times.

"Q. Do you know what is described in that particular article?

"A. Yes, I have read the article, and as I say it is essentially the cementing technique that was employed in Venezuela, which was quite similar to what we had used in the Gulf Coast, as well as the new cementing head that was developed by Mr. Hall during that time.

"Q. Well, who conducted that cementing technique in Venezuela that is described in the article?

"A. How do you mean, conducted?

"Q. Well, I mean, who took part or who instructed the Gulf employees in Venezuela according to this technique that is described in the article? Did you have any part in that?

"A. Yes, Mr. Hall and myself.

(Deposition of A. J. Teplitz.)

"Q. Was that the purpose of your trip when you [243] went to Venezuela?

"A. That is right." [244]

* * *

"Q. I put before you two photographs which have been marked during Mr. Houghton's deposition as plaintiff's Exhibits 61 and 62. Have you seen those photographs before?

"A. I am not sure that I have seen the photographs.

"Q. Have you seen the scratcher that is shown in the photographs, or one like it?

"A. Yes, I have." [246]

* * *

"Q. Where did you see them?

"A. I saw it earlier last year in the office of Mr. Hubbard in Houston.

"Q. Have you used any of those scratchers on any of the cementing work that has been done by you for the Gulf? A. No.

"Q. Have you made any tests on those scratchers up to the present time? A. No.

"Q. To your knowledge, has the Gulf purchased any of those scratchers?

"A. I have no knowledge of it if they [247] have."

* * *

Q.164: Relative to this meeting you testified you had with Mr. Wright on or about January or February of 1946, did he hand you a catalogue or bulletin of B & W, Inc., at that time?

(Deposition of A. J. Teplitz.)

A. I had such a catalogue in my possession at that time, but I don't recall whether he handed it to [284] me or not.

Q.165: It is your recollection then that he either handed it to you or you had it available at that time? A. Yes.

Q.166: Is that the catalogue which I show you at the present time, which is Bulletin No. 102, so marked in the upper right-hand corner?

A. (Examining): I believe this is the one. I believe that is right. Or one quite similar to it. The reason I say that is because at another time I obtained another catalogue showing the B & W equipment and I can't at this time tell, unless I saw both of them together, I wouldn't be able to tell, but this looks very much like the first one that I had or that Mr. Wright gave me, I don't know how I obtained it.

Mr. Caughey: The catalogue shown to the witness and identified as Bulletin No. 102, the reporter is requested to mark as Exhibit A to the deposition of this witness for identification.

(The paper referred to was marked for identification as defendants' Exhibit A-Teplitz.)

Q.167: Prior to the time that you talked with Mr. Wright in January or February, 1946, or at least the early part, had the Gulf made any tests at all with scratchers? [285]

A. I understand they had. I have no direct knowledge of it except by hearsay.

(Deposition of A. J. Teplitz.)

Q.168: There were no tests made in connection with the particular project you are on at the time, up to that time, is that right?

A. That is right.

Q.169: And how did you come to contact Mr. Wright relative to the use of scratchers?

A. I believe he contacted me. I first called the B & W Company at the M. & M. Building, I believe in Houston, to obtain some information of the scratchers.

Q.170: And thereafter Mr. Wright——

A. Called on me.

Q.171: ——called on you?

A. That is right.

Q.172: And Mr. Wright at that time offered, did he not, to supply B & W scratchers for tests, if you desired them? A. That is right.

Q.173: He also told you at that time, did he not, to get in touch with the Superior Oil Company, if there was any question as to moving pipe, it might remove any doubt that you might have in your mind as to whether the pipe could be reciprocated?

A. My recollection is that he referred me to the [286] Pure Oil Company rather than the Superior.

Q.174: But for that purpose?

A. Well, yes, that is right. For the results.

Q.175: Now, you also testified that he explained the method, the B & W method, to you at that time?

A. Yes, I am sure he did. My recollection of his explanation is rather vague other than what I

(Deposition of A. J. Teplitz.)

have previously testified, that you place them opposite producing zones.

Q.176: Did he also tell you at that time that the B & W method included the reciprocation of the casing not only during the time that the mud was being circulated but also during the period of time that the cement slurry was being circulated, and before the cement set?

A. Yes, essentially, except that he said, as I recall, that they reciprocated casing up until the cement slurry rounded the bottom of the casing and reached this passage above the scratchers. That is, as you understand, when they cement a casing they pump a plug down. Well, his method, as I recall, was to pump and reciprocate until the cement rounded the shoe and reached the scratchers, but not necessarily until the plug bumped. As a matter of fact, as I recall, I think he said that it wasn't wise to reciprocate for the full duration, or it wasn't necessary, [287] something of that sort.

Q.177: Do you recall whether or not Mr. Wright at that time explained that it was quite important that the reciprocation of the casing be continued while the cement slurry was being circulated, so that there would be no possibility of a redeposit of the mud upon the bore of the hole? And when I say mud, I mean filter cake.

A. No, I don't recall that part specifically.

Q.178: You don't recall any such conversation?

A. Well, the gist of it, as I have said, is that I recall he suggested that the reciprocation should be

(Deposition of A. J. Teplitz.)

continued until the cement passed the scratchers. Let me see now—I think I ought to retract that. I think now, as I recall, what he said was to reciprocate the pipe until the cement rounded the shoe. That filter cake would already be scratched away in that time. And that the reciprocation should be continued until the cement rounded the shoe and went out into the annulus. But I distinctly remember that he didn't mention reciprocating until the plug reached bottom.

Q.179: Did you understand by what Mr. Wright told you that there was no reciprocation of the pipe at any period of time when the cement slurry was going past [288] the producing zone, or where you wanted to set the cement?

A. That is roughly my recollection of it. You see, at that time I wasn't too familiar with the process, I just had very little contact with it previously.

Q.180: So then you didn't pay any particular attention to the method that he described at that time, is that correct?

A. Yes, I paid some attention to it but——

Q.181: Not a detailed attention?

A. No. And I went to see the Pure Oil Company to check up on, as he suggested, on the process.

Q.182: Were they using the method of conditioning wells where they used scratchers at that time?

A. That is right, they were using the B & W equipment almost exclusively.

(Deposition of A. J. Teplitz.)

Q.183: And did you inquire from Pure as to the method that they were actually using?

A. Yes.

Q.184: And who did you contact at Pure Oil Company?

A. Mr. Alcorn at the Houston office of the Pure Oil Company.

Q.185: Then you didn't go out in the field and actually see some B & W scratchers being used, or tests being made? [289]

A. No. But one thing impressed me that Mr. Alcorn said. He said, told me—I asked him what the results were, whether the scratchers were a benefit to him, and he said at that time, "Well, we can't be sure, we don't know, we still have to squeeze on quite a few wells." And I checked up on the Halliburton representative at Houston to find out what kind of success Pure Oil Company had had with these scratchers, and found that they had reduced their squeeze jobs from a figure of about two squeeze jobs per completion to slightly less than one squeeze job per completion, which while still an improvement didn't seem to me to be enough.

Q.186: Now, you testified that you, shortly after this conversation with Mr. Wright, contacted John Hall? A. He contacted me.

Q.187: Oh, he contacted you? A. Yes.

Q.188: Do you know how he happened to contact you?

A. Yes. Mr. Aubrey Schofield, who then was an assistant to the vice president of the Gulf in Hous-

(Deposition of A. J. Teplitz.)

ton, called me one day and said that he had a Mr. John Hall in his office who would like to speak with me about cementing.

Q.189: And was Mr. John Hall associated with the [290] Weatherford Tool Company at that time, and so represented himself?

A. Weatherford Spring Company.

Q.190: I meant Weatherford Spring Company, pardon me. A. Yes.

Q.191: Did he explain to you the method used by Weatherford Spring Company in conditioning wells? A. Yes, he did, that is right.

Q.192: And what did he say that method was?

A. The use of scratchers opposite the section of the hole, important sections of the hole, together with centralizers, spacers, at strategic points in the well, and he explained to me the theory behind the use of the centralizers and the scratchers and gave me a bulletin also.

Q.193: Did he say that in the use of that method they reciprocated the casing?

A. That is right.

Q.194: Did he say at what particular period of time during the operation the casing was reciprocated?

A. During the circulation of the mud and the pumping of the cement, mixing and pumping of the cement, until the plug landed.

Q.195: And did he tell you why, did he state why they continued the reciprocation of the casing until [291] the plug landed? A. Yes, he did.

Q.196: What did he say?

(Deposition of A. J. Teplitz.)

A. He said, well, it's a matter of insurance to get the best job, that it would be advisable to reciprocate all the time, that probably the major part of the work, the benefit of the scratchers had been obtained somewhat earlier, but just as an added insurance the continued reciprocation was advisable.

Q.197: Did he point out the importance of reciprocating the casing during the period of time when some other fluid than mud was being circulated, so as to prevent the redeposit of any mud or filter cake on the wall of the bore?

A. I don't recall whether he made that statement or a statement to that effect, but I recall that Mr. Hall, Sr., did subsequently say it was important to have the reciprocation at the time that the cement was passing this zone that you wanted to seal.

Q.198: Did you, from your knowledge of cementing of oil wells, appreciate the fact that there would be a redeposit of mud on the wall of the bore, even though scratchers were used, and the residue or material which you scratched on the wall might be carried to the top but nevertheless there might be a possibility [292] of redeposit?

A. I was aware of that possibility but not as sure that it was a serious thing during the period of time that you were cementing a well. That is still an open question, as to how permeable that formation is.

Q.199: And you were aware of that when you first talked with Mr. Wright in the early part of 1946? A. Yes.

(Deposition of A. J. Teplitz.)

Q.200: And did the Gulf thereafter use the method which was described by Mr. John Hall at that time? A. With variations.

Q.201: With variations? A. Yes.

Q.202: What variations?

A. The chief variation was to place the scratchers not only just opposite the producing zone but throughout the section where the cement was deposited.

Q.203: Any other of importance?

A. Subsequently they lengthened the time of reciprocation prior to cementing, prior to mixing the cement, during circulation period.

Q.204: Do you mean during the period the mud was being circulated?

A. During the period the mud was being circulated, [293] before the cement, yes. And one more point is there was a variation in the method of running the casing into the well with scratchers and centralizers, and that was to stop periodically and circulate out the mud as the pipe was being lowered into the well.

Q.205: And what was the purpose of that?

A. That was to clean the walls of the hole so that when the casing arrived on the bottom, the pump pressures would be lowered and most of the cleaning of the walls—most of the material removed from the walls would have been circulated out, to prevent any possibility of bridging of these materials up the hole, in which case the cement might be left in the casing.

(Deposition of A. J. Teplitz.)

Q.206: And was that at the suggestion of some representative of Weatherford Spring Company?

A. Well, largely the result of discussion between Mr. Hall and myself.

Q.207: That is the only reason you can think of for the stopping, other than the ones you have given?

A. Well, that is the end we wanted to achieve and it was practically essential in the Venezuela operations, because they had so much trouble, they had such thick filter cakes that excessive pump pressures were developed and we had loss of circulation, [294] loss of returns due to the heavy cake being removed, and that was the only way you could get down without encountering those difficulties.

Q.208: I believe you previously testified Mr. Hall accompanied you to Venezuela when you went there? A. Yes.

Q.209: In the early part of 1947? Is that correct? A. Yes.

Q.210: And in that you are referring to Mr. Hall, Sr., are you not? A. That is right.

Q.211: And you stayed in Venezuela until shortly before the meeting in Pittsburgh at which Mr. Hall and you and Dr. Westcott and Mr. Vollmer and Dr. Kennedy were present, is that correct?

A. Yes, and one of the younger Halls.

Q.212: Which one of the younger Halls was it?

A. I believe it was Jesse, Jr.

(Deposition of A. J. Teplitz.)

Q.213: Had he been accompanying you to Venezuela also? A. No.

Q.214: Was that the only trip you made to Venezuela, Mr. Teplitz? A. That is right.

Q.215: Now, with reference to that conference which [295] was had with Mr. Wright and Mr. Barkis and with the representatives of the Gulf Research and Development Company which you previously testified to, and which was held in June, 1947, that conference generally was held on a technical basis, wasn't it; there wasn't much said about patents, it was primarily a technical discussion?

A. That is my recollection.

Q.216: Isn't it a fact that I think it was Dr. Westcott said if there was any question of patents or legal matters, to contact Mr. Houghton relative to the same?

A. I know that is the policy of the company. I don't recall the statement, but that is the policy of the company.

Q.217: Now, you testified that you had had some conversation with Mr. Barkis at some time, which you couldn't definitely place, where he had made the statement that Weatherford Spring Company was infringing, I think you said, the Wright method patent, or Wright patent?

A. Wright patents, I think.

Q.218: Isn't it possible what Mr. Barkis said was that under the Hall-Wright agreement it was the contention of B & W that Mr. Hall didn't have a right to [296] manufacture the particular scratcher which he was making?

(Deposition of A. J. Teplitz.)

A. I believe that is right, I believe that is more correct than the statement I first made.

Q.219: You stated I believe in your testimony that you saw the Nu-Coil scratcher you thought early last year in the office of Mr. Hubbard?

A. Yes. Well, you said early, it is rather indefinite, I believe it was toward the middle of the year.

Q.220: Well, as a matter of fact, wouldn't it be later than the middle of the year?

A. Yes, I believe it would be, it would be just shortly before that A.P.I. meeting, shortly before that.

Q.221: And the A.P.I. meeting was when?

A. November.

Q.222: 1949? A. 1949.

Q.223: In Chicago, right? A. In Chicago.

Q.224: Did any representative of B & W at any time, Mr. Teplitz, in any conversation they might have had with you state that they were going to sue the Gulf Oil Company for infringement, or any of its subsidiaries? [297] A. No. [298]

* * *

(Mr. Scofield reading the questions and Mr. Subkow reading the answers from the Vollmer deposition.)

DEPOSITION OF LESLIE W. VOLLMER

Mr. Scofield:

"Q. Please state your name.

"A. Leslie W. Vollmer.

(Deposition of L. W. Vollmer.)

"Q. Your address, Mr. Vollmer?

"A. Home address is 434 Shady Avenue, Pittsburgh 6, Pennsylvania. [306]

"I would like to have you briefly give your present employment and your association with Mr. Teplitz and Mr. Westcott; and then identify the letter dated October 10, 1947——

"Mr. Scofield: Which I ask the reporter to mark as plaintiff's Exhibit 67 for identification——

"Q. ——and recite, if you will, the circumstances under whch you received this letter; and whether or not you attended the conference that was had a short time before this letter was received. Now you can do that all at once or you can break it down.

> "(The letter referred to dated October 10, 1947, was marked for identification as plaintiff's Exhibit No. 67. Per instructions, photostats were made and the original letter returned.)

"A. Well, I will start and you can stop me if you want. If I remember your request, first, I am Director of the Materials and Production Chemistry Division of the Gulf Research and Development Company, and have been since April 15, 1946. Mr. Teplitz is Assistant Director of the same Division and has been since September 15, 1949.

"At the time the letter which is Exhibit 67 was received we were preparing to conduct some comparative [307] tests on scratching equipment to determine what equipment other than Weatherford

(Deposition of L. W. Vollmer.)

equipment could be utilized in the cementing operations of the Gulf Oil Corporation. The arrangements for the tests on the B & W equipment referred to in the Exhibit No. 67 were made at a conference held in Pittsburgh about September 8th or 9th, 1947."

(The portion omitted from reading by plaintiff's counsel is herewith copied at request of defendant's counsel.)

"Q. The letter makes reference to some Multi-Flex scratchers. Had you prior to the date of this letter known of the Multi-Flex scratcher of the B & W Company? You might state whether or not they were mentioned at the meeting on September 8, 1947, if you recollect.

"A. I do not recall their having been discussed at the September 8, 1947, meeting.

"Q. You made a memorandum of that meeting and sent it to Mr. Houghton, did you not?

"A. Yes, I believe that I recall that I did prepare such a memorandum."

Mr. Scofield: Then skip over to page 4 at the top, question 7.

At this time, your Honor, I would like to offer the letter marked for identification as Plaintiff's Exhibit 67 [308] into evidence.

* * *

"Q. And it is your present recollection that was the first occasion that you had heard of the Multi-Flex scratchers of B & W?

"A. That is my recollection at the moment.

(Deposition of L. W. Vollmer.)

"Q. You sent to Mr. Houghton, did you not, the photographs of the Nu-Coil scratcher, which have been marked as plaintiff's Exhibits 61 and 62?

"A. Yes, I did. [309]

"Q. Do you recall whether these photographs were sent to Gulf by B & W?

"A. Yes, they were sent to me by Mr. Wright.

* * *

"Q. Then you saw these scratchers, that is, physical specimens of the scratchers, at the A.P.I. in Chicago? A. That is right.

"Q. And you had a conversation with Mr. Wright [310] about the B & W Nu-Coil type scratcher?

"A. With Mr. Wright and Mr. Barkis.

"Q. What did they say during that conversation with regard to these scratchers?

"A. My recollection of the conversation was that these scratchers had all of the attributes that we desired in scratchers for our work, and that in the opinion of their attorney they did not or would not infringe any claims that might be allowed on the Weatherford patent applications.

* * *

"Q. Was there any other conversation that you remember with regard to this Nu-Coil type scratcher, other than that?

"A. Well, the conversation mainly hinged about they hoped it would meet with our approval and that we would be able to see our way clear to utilize these in our operations, and that the price of [311]

(Deposition of L. W. Vollmer.)

these scratchers would be competitive with the Weatherford scratchers.

"Q. And they indicated at that time, did they not, that they were going on the market with this scratcher?

"A. It was my understanding that they were available almost immediately.

"Q. And in offering this or showing them to you, they were ostensibly submitting them to Gulf for purchase? A. That is my understanding.

"Q. Did either Wright or Barkis indicate to you how this type scratcher would be mounted on the casing?

"A. I don't recall that there was any detailed discussion of that mounting, but from inspection of the device I assumed that it would be mounted in the manner similar to the mounting used by us with Weatherford scratchers.

"Q. And that is rotatively mounted on the casing? A. Yes." [312]

* * *

"Q. Mr. Vollmer, you are familiar with the fact that the Multi-Flex scratcher is rotatively mounted on the casing, is it not? A. Yes.

"Q. And has been so used by the Gulf?

"A. That is right.

"Q. You referred to a letter which you wrote Mr. Houghton, I believe, in which you sent him the photographs of the B & W scratcher which had been forwarded to you by Mr. Wright?

"A. You refer to the Nu-Coil scratcher?

(Deposition of L. W. Vollmer.)

"Q. I do. A. I did.

"Q. Have you a copy of that letter available?

"A. I don't have a copy of it with me but there is a copy available in our files.

"Q. May I ask what else you forwarded in that letter, in addition to the photographs which you have testified to? Do you recall anything else?

"A. The letter in substance stated, or reviewed the situation relating to the Multi-Flex scratcher and the fact that we had had seven successful tests with them but the continued use of them was unlikely in view of their higher cost compared with the Weatherford equipment, and that the B & W people [313] were now offering the Nu-Coil scratcher, which was to be competitive in price and appeared to be essentially the same as the Weatherford scratcher as far as performance was concerned; we had not as yet had an opportunity to make other than a casual inspecion but were expecting examples that could be thoroughly examined at a later date.

"Q. Did you not also say in that letter that the last time Mr. Hall was in Pittsburgh, or at least contacted somebody in Pittsburgh, that he had supplied a copy of six allowed claims on one of his patent applications, and made the statement that at least one of those claims covered the Multi-Flex scratcher of B & W, and you assumed that he would make a similar contention insofar as the Nu-Coil scratcher was concerned?

"A. I made statements in general in that vein

(Deposition of L. W. Vollmer.)

but I am not sure that I made the statement that those claims would cover these products, because I don't feel qualified to pass judgment on that.

"Q. Pardon me, I didn't say that you made such a statement, I said that Mr. Hall made such a statement.

"A. I beg your pardon. Yes, I believe I did.

"Q. And did you not enclose copy of those claims [314] in the letter that you wrote Mr. Houghton? A. I did.

"Mr. Caughey: May I ask Mr. Kessler if you have a copy of that letter available, together with the enclosed copy of claims?

"(Off the record discussion, with production of copy as follows.)

"Q. That is the letter to which you referred?

"A. Yes.

"Q. And it is dated November 28, 1949?

"A. That is right.

"Mr. Caughey: I ask that the letter, together with the claim specified, be marked for identification as defendants' Exhibit B to the deposition of Mr. Vollmer, and that photostats of the same be made and that the photostat be marked instead of the letter which is handed to the reporter.

"And I assume, Mr. Scofield, that it will be agreeable that the photostat shall have the same force and effect as the letter which has been handed to the reporter?

"Mr. Scofield: In agreeing to that, I assume that you will agree to the same in regard to these

(Deposition of L. W. Vollmer.)

original letters that we intend to put in as photostats, which will be substituted for the [315] letters offered during the witnesses Teplitz and Vollmer depositions?

"Mr. Caughey: That is correct.

"(The letter with attachments referred to, dated November 28, 1949, was marked for identification as defendants' Exhibit B-Vollmer. Photostat was later secured and substituted for the letter, letter produced being returned.)

"Q. (By Mr. Caughey): Now, it is my understanding, Mr. Vollmer, that the letter to Mr. Houghton in which you set forth the substance of what took place at the September, 1947, meeting was the result of notes that you made at the meeting?

"A. The memorandum that I prepared was based on the combined notes taken by a secretary, Mr. Houghton and myself.

"Q. And the notes that you took were taken in longhand, were they?

"A. Yes. Or they were a transcription of the secretary's shorthand notes. At any rate, I worked on longhand notes.

"Q. The memorandum in which you reported to Mr. Houghton I believe accompanied a letter which was [316] dated September 25, 1947?

"A. It was.

"Q. In that memorandum, there is a statement, Mr. Vollmer, that is attributed to Mr. Wright, that he had referred the matter of entering into the agreement between Hall and Wright to a Mr. Max-

(Deposition of L. W. Vollmer.)

well, or that Mr. Maxwell had something to do with it, and I believe the statement was made in there that Mr. Wright had stated Mr. Maxwell was his attorney. I suggest that you might have been in error in that, that Mr. Wright might have said that Mr. Maxwell was his patent attorney. Have you any recollection of that independently of the memorandum?

"A. I don't believe I have a clear recollection but I wouldn't object to being in error on that particular point.

"Q. There was nothing that was brought up that would make any particular distinction or any reason why you would put, attorney, rather than, patent attorney? In other words, there was nothing said at the meeting which would indicate just exactly what status Mr. Maxwell had, was there?

"A. None that I recall.

"Q. And as far as you were concerned, the question of whether he was a patent attorney or an attorney had [317] nothing to do with the particular meeting in which you were sitting, or which you were discussing, is that right?

"A. That is correct.

"Q. In that same memorandum, Mr. Vollmer, there is a statement attributed to Mr. Wright that Mr. Hall, Sr., in April, or thereabouts 1941, had contacted Mr. Wright or a representative of B & W in Los Angeles relative to B & W manufacturing the Hall scratcher? A. Yes, I recall that.

"Q. I suggest to you the possibility of an error

(Deposition of L. W. Vollmer.)

as to that in the memorandum, and suggest that, could it be possible that Mr. Wright might have said that Mr. Hall contacted someone in Los Angeles relative to manufacturing the scratcher and that such information had come to the attention of B & W?

"A. That could very well be. My notes indicate that Mr. Hall had contacted either Mr. Wright or B & W or some representative of them, for the purpose of attempting to get them to sell the Weatherford scratcher, presumably in the Los Angeles area or the California area.

"Q. But as I say, I suggest that might be an error and it might have been as I suggested? [318]

"A. Yes, it might have been.

"Q. And also later on in the memorandum, adjacent to that particular portion of the memorandum, there was a statement attributed to Mr. Wright that after that particular transaction Mr. Hall had contacted Mr. Barkis at Houston relative to the same proposition, that is, the manufacture of Hall scratchers by B & W? A. Yes.

"Q. I suggest that might be in error and also suggest that, isn't it possible Mr. Wright may have said that Mr. Hall contacted someone in Houston relative to the manufacture of Hall scratchers and that that party in Houston contacted Mr. Barkis and told him about Mr. Hall contacting that particular individual?

"A. I have a recollection of making a note on that point and I can't imagine what would cause

(Deposition of L. W. Vollmer.)

me to place Mr. Barkis in Houston at that particular time unless someone had mentioned the fact. So I am inclined to believe that the note that was made on that was based on a statement that Mr. Hall had approached Mr. Barkis on the same subject in Houston.

"Q. I might say, Mr. Vollmer, that Mr. Barkis was in Houston and had been, was frequently [319] in Houston, regardless of whether Mr. Hall or anybody else might contact him, that is where he was located.

"A. Well, I am not aware of that and I can't say that I was at that particular time.

"Q. Yes. Mr. Vollmer, has any representative of B & W, Inc., Mr. Wright or Mr. Barkis, or any other representative at any meetings you have ever attended or by telephone calls or by correspondence or otherwise, ever made any statement that they were going to sue Gulf Oil Company or any of its subsidiaries for any infringement of the B & W patents? A. Never to my knowledge.

"Mr. Caughey: That is all." [320]

* * *

"Q. In this conference, or at this conference where Mr. Wright and Mr. Decker were present, Mr. Wright in a deposition given in California prior to the trial stated that at that conference on September 8, 1947, Decker stated that he believed that the Gulf's use of the Hall device was an infringement of the B & W method patent. Do you recall the attorney Decker making that statement?

(Deposition of L. W. Vollmer.)

"A. Yes, I do.

"Q. You have a definite recollection of that?

"A. Very clear.

"Q. Do you recall also that Mr. Wright on his own behalf stated that he considered Gulf's use of the Hall equipment to be an infringement of his method patent?

"A. I can't recall an exact statement or an exact occasion or a specific occasion on which Mr. Wright made that statement, but at the time of the conference it is my recollection that there was agreement between Mr. Decker and Mr. Wright on that point."

* * *

"Mr. Scofield: It is stipulated by counsel [321] that a second indemnity letter was furnished by the Weatherford Oil Tool Company over the signature of Jesse Hall, Jr., subsequent to April 19, 1949.

"Mr. Caughey: It is so stipulated."

Mr. Scofield: I made a statement then on the record: "It is stipulated by counsel that a second indemnity letter was furnished by the Weatherford Oil Tool Company over the signature of Jesse Hall, Jr., subsequent to April 19, 1949."

Mr. Caughey said: "It is so stipulated." [322]

* * *

"Q. Mr. Vollmer, at the time that Mr. Hall gave you copies of these claims, or at least gave you the information from which you could make copies of the claims, did he tell you as soon as the allowed patent was issued he was going to sue B &

(Deposition of L. W. Vollmer.)

W for infringement on the Multi-Flex scratcher?

"A. I don't recall any such statement as that.

"Q. What did he say when he gave them to you?

"A. My recollection of the conversation was that these claims were allowed and when the patent issued he would then be in a position to stop B & W from manufacturing and selling even the Multi-Flex scratcher, he felt that it was covered by the claims also.

"Q. And that conversation took place in Pittsburgh? A. In Pittsburgh.

"Q. And where in Pittsburgh?

"A. At my office, Gulf Research and Development Company.

"Q. And can you fix a time or approximately the time?" [323]

* * *

DEPOSITION OF B. J. DOWD

Mr. Scofield: The deposition of B. J. Dowd, and he, your Honor, is another one of Union Producing employees:

"Q. Please state your name?

"A. B. J. Dowd.

"Q. Give your residence, Mr. Dowd?

"A. 3812 Creswell Street, Shreveport.

"Q. By whom are you employed?

"A. Union Producing Company.

"Q. In what capacity?

"A. Supervising production engineer.

"Q. Briefly state what your duties are?

(Deposition of B. J. Dowd:)

"A. My duties are that in our department we have a chief engineer and an assistant chief and then a supervising engineer. The work that comes in to our department to the chief engineer and the assistant chief is passed on to me for distribution to my division engineers and district engineers." [382]

* * *

"Q. Briefly state what your education qualifications are? [383]

* * *

"A. I have a degree from the University of Oklahoma.

"Q. Engineering Degree?

"A. Yes, sir, Bachelor of Science in Engineering."

Mr. Scofield: Beginning on line 18:

"Q. How long have you been employed by the Union Producing Company?

"A. It will be sixteen years this coming April." [383-A]

* * *

"Q. When were you first assigned to the Producing Division of your company?

"A. I have been in the drilling and production department as a field engineer and then on through the company since approximately November, 1934.

"Q. And since that time has your work been principally in the producing end of the company?

"A. Yes, sir.

"Q. So, you were familiar with the problems that the company had in the completion of wells?

(Deposition of B. J. Dowd.)

"A. Yes, sir, in a general way; for a large portion of that time I was assigned strictly to our Rodessa Field and didn't have any dealings with any other fields the company was operating then.

"Q. And when was that?

"A. That was from July of 1935 until [386] approximately February of 1941.

"Q. So that during the period you have stated, 1935 to 1941, you were familiar with the problems in the Rodessa Field?

"A. Correct, sir.

"Q. Now, subsequent to 1941—that is, from 1941 to date—have you been familiar with the problems of the production and completion of oil wells of the company, generally?

* * *

"A. In approximately February of 1941 when I went into what we call our general office which is here in Shreveport I was on certain engineering problems and was away from the drilling for a period of time."

* * *

"Q. Assuming that this article appeared on the date that is indicated, March, 1948, there is a statement in the second paragraph of the article that the company, 'Union Producing Company last year overcame a perennial and recurring bugaboo which has long tended [387] to work against our production forces in the completion of oil and natural gas wells.'

"Do you know that to be a fact?

(Deposition of B. J. Dowd.)

"A. That, I believe, is referring to the trouble that we were having, particularly in fields where we were endeavoring to make dual completions and getting a good cement job. It became necessary that before we would complete a well as a dual completion we would have to go in and squeeze cement."

* * *

"Q. You better explain what you mean by 'dual completion.'

"A. A dual completion is drilling, you might say, one hole in the ground and running your string of tubing or a packer to where you produce your lower formation through the string of tubing and an upper formation, you perforate your casing and it comes in above the packer and it produces in the annular space between the tubing and the casing."

* * *

"Q. Now, is the procedure that is described in [388] this article intended to avoid those difficulties you had had prior to the time that you adopted this procedure?

"A. We were endeavoring to eliminate the additional work and expense of squeeze cementing, yes, sir.

"Q. And by the adoption of the procedure described in the article, did you eliminate that squeeze cementing operation that you had previously used?

"A. To a great extent, yes, sir." [388A]

* * *

"Q. I appreciate that, Mr. Dowd, and my ques-

(Deposition of B. J. Dowd.)

tion was not directed as to whether or not you were directed to authorize that. My question was merely whether or not you knew how this procedure happened to become adopted by the company.

"A. The only thing I know about that is when Mr. Quigles called me into his office and said we were going to start again using centralizers and scratchers in an endeavor to eliminate our problem. [388B]

"Q. Did you have any talks with Mr. Jesse Hall, Sr., prior to the time that this procedure was adopted?

"A. I saw Mr. Jesse Hall, Sr., as I recall it, one time in Mr. Quigles' office.

"Q. Did you attend any of the lectures or talks that were given by Mr. Hall to the field superintendents explaining this procedure?

"A. Lectures and talks?

"Q. Yes.

"A. No, sir, I did not. I was out on one of the wells when we were first starting just to see how the equipment went on the pipe and the procedure you went through in using the equipment but I didn't attend any lectures or talks.

"Q. How did you happen to be on this particular well to watch this procedure?

"A. Mr. Quigles asked me to be there." [389]

* * *

"Q. Did you write this article or the draft of the article as a result of that visit on the well,

(Deposition of B. J. Dowd.)

or did you get your information from some other source?

"A. I got it from my visit to that particular well plus the records that came in on our daily drilling reports on other wells on which the equipment was used."

* * *

"Q. Do the drilling reports from the wells of the Union Producing Company come to you?

"A. I get a copy of them but they do not [390] come direct to me.

"Q. What did you do with these reports you received?

"A. I look them over to keep up with what we are doing on the various wells and pass them on to the other engineers working for me.

"Q. Do you know where the photographs came from that appear in this article in 'Sommer Deposition Exhibit No. 1'?

"A. No, sir, I do not."

Mr. Scofield (Reading): "Q. Do you recognize the equipment that is shown in this article and I call your attention first to the centralizers and scratchers shown in the cut at the bottom right-hand corner of page 3?

"A. It appears to be a Weatherford spiral centralizer.

"Q. Can you recognize the scratchers that are shown there?

"A. Those appear to be Weatherford scratchers.

"Q. On page 6 which has been marked in pencil

(Deposition of B. J. Dowd.)

in the lower right-hand corner of the page, can you recognize and identify the cementing head that is shown in that cut?

"A. No, sir. There are too many types of [391] cementing heads.

"Q. You don't recognize that?

"A. No, sir.

"Q. You recognize the scratchers which are shown in the two cuts on page 7?

"A. Those appear to be Weatherford scratchers.

"Q. Can you recognize the centralizer shown in [391A] the upper cut on page 7?

"A. Yes, sir.

"Q. What is that?

"A. It appears to be a Weatherford spiral centralizer.

"Q. Now, on page 8 of the article, third from the last paragraph, there is a statement: 'Prior to the adoption of these devices, Union was forced to make many squeeze jobs on wells in order to obtain a successful cement job. Since March of last year, however, it has not been necessary for our company to squeeze cement into a single new well.'

"A. We went for quite a while before we ever had to squeeze a well that we used centralizers and scratchers on; that is correct.

"Q. Do you know when you started to use the Weatherford equipment?

"A. No, sir, I do not.

"Q. I will refer you to the first page of this article and call your attention to the third para-

(Deposition of B. J. Dowd.)

graph and ask whether or not that refreshes your recollection as to when you began using scratchers and centralizers in the Union Producing Company?

"A. Yes, sir, because that would have been taken from our records. [392]

"Q. Now, what is your recollection as to when you started to use scratchers and centralizers, having been refreshed from the article?

"A. March, 1947.

"Q. So, between March, 1947, and the date of the article, which appears to be March of 1948, the Union Producing Company was not obliged to squeeze any wells?

"A. Not any new wells we used that equipment on. There could have been possibly work-overs.

"Q. Have you ever heard of the controversy that exists between B & W and Weatherford with respect to these scratcher devices or tools?

"A. Yes, sir, I have heard of it.

"Q. When did you first hear of that controversy? A. I don't recall when it was.

"Q. From whom did you hear of the controversy for the first time?

"A. Mr. Quigles called me into his office and told me that due to, I guess you would call it due to an opinion that he had received from his legal counsel that for the time being we would have to discontinue the use of Weatherford scratchers.

"Q. And to your knowledge were the Weatherford scratchers discontinued? [393]

"A. Yes, sir.

(Deposition of B. J. Dowd.)

"Q. Was it by your order or somebody else's?

"A. Well, it came through our lawyers to Mr. Quigles and he told me about it as I have just stated.

"Q. And did you notify the field men?

"A. I called each of our district offices where we have producing districts and told them that was what Mr. Quigles had asked me to do. He asked me to notify them.

"Q. What did you notify them?

"A. I told them that Mr. Quigles had informed me that for the time being we would have to discontinue the use of Weatherford scratchers.

"Q. And this was done over the 'phone to these superintendents or to the men in the field?

"A. To our district offices.

"Q. To your district offices?

"A. Yes, sir.

"Q. To your district offices?

"A. Yes, sir.

"Q. And you talked personally over the 'phone with each one of these men?

"A. I talked—I was calling our district managers in each of our districts.

"Q. And you talked personally with each one of [394] the district managers?

"A. In which we have drilling and producing districts.

"Q. And you told the district managers to discontinue the purchase of Weatherford equipment for the time being?

(Deposition of B. J. Dowd.)

"A. I said Weatherford scratchers.

"Q. Did you give the district managers any instructions with respect to centralizers?

"A. They were told—they could continue using the Weatherford centralizers; that our counsel had not instructed us to discontinue the use of those. They could continue if they so desired.

"Q. To your knowledge, were your instructions followed?

"A. So far as I know, sir." [395]

* * *

"Q. You are acquainted with Mr. Bruce Barkis?

"A. I have met him or have seen him on API Committees.

"Q. What do you mean by that, Mr. Dowd?

"A. API is the American Petroleum Institute and they have various committees which for a time I was a member of some of them and on one of the committees he was also a member when we had our annual national meeting.

"Q. So, you and Mr. Barkis were members of a committee of the API on one or more occasions?

"A. I have seen him at those meetings. I have never been with the gentleman. There is a large group there and everybody is in this big room when you have a meeting. I have seen him when he would get up to speak and tell who he was and give his name. That is all.

"Q. The occasions you have seen Mr. Barkis on these API Committees are the only occasions you have met Mr. Barkis?

(Deposition of B. J. Dowd.)

"A. So far as I can recollect, yes, sir.

"Q. Do you know Mr. Kenneth Wright, who sits across the table from you? [395A]

"A. No, I do not.

"Q. You have met him here this morning for the first time? A. Yes, sir.

"Q. Do you recollect a meeting you had with Mr. Sommer and Mr. Bruce Barkis when they called at your office?

"A. No, sir, I do not.

"Q. You haven't any recollection of Mr. Barkis ever coming to your office?

"A. Not that I recollect, sir.

"Q. What floor are you on there in the Union Producing Company? A. Fifth Floor.

"Q. On the same floor as Mr. Quigles?

"A. Yes, sir.

"Q. Your office adjoins his?

"A. No, sir, it does not. There is four offices between his and mine.

"Q. You recall meeting me, do you not, during December of last year?

"A. Yes, sir, when you and Mr. Hall and your pilot came in.

"Q. But you have no recollection of having talked with Mr. Bruce Barkis and Mr. Sommer during [395B] the years 1948 and 1949?

"A. No, sir. I have talked to Mr. Sommer.

"Q. But you don't recall any occasion when he was there with Mr. Bruce Barkis?

"A. No, sir. I do not.

(Deposition of B. J. Dowd.)

"Q. Do you have any recollection of talking to Mr. Richardson with Mr. Sommer?

"A. Mr. Richardson has been by my office, yes, sir.

"Q. Have you on any occasion ever discussed with Mr. Sommer any of the patents of B & W?

"A. No, sir.

"Q. Have you ever discussed with Mr. Richardson the patents of B & W? A. No, sir.

"Q. Now, on any occasion, either in your office or at these API Committee meetings, have you ever discussed patents of B & W with Mr. Barkis?

"A. No, sir.

"Q. Did you ever discuss a contract which Mr. Wright and Mr. Hall had in the settlement of a controversy in the Patent Office with either Mr. Barkis or Mr. Sommer? A. No, sir.

"Q. Were you ever present with Mr. Quigles, either [395-C] in your office or in Mr. Quigles' office, when Mr. Sommer and Mr. Barkis were there?

"A. No, sir.

"Q. You don't recall that?

"A. I do not recall that." [395D]

* * *

"Q. When Mr. John Hall and I called on you in the latter part of December, 1949, you showed us a B & W Nu-Coil type of scratcher, did you not?

"A. Yes, sir.

"Q. Do you have that here this morning?

"A. Yes, sir.

"Q. Would you produce that, please? You have it in a box? A. Yes, sir.

(Deposition of B. J. Dowd.)

"Q. You need not open it. This scratcher was the same one that was shown to Mr. John Hall and I on the occasion when we were in your office?

"A. Yes, sir.

"Q. Where did you get that scratcher?

"A. Mr. W. L. Sommer left it with me at Mr. Quigles' request.

"Q. When?

"A. May I correct that, please? He brought it by to show to me at Mr. Quigles' request. It was approximately—it was several days before you and Mr. Hall were in my office. I do not recall exactly how many days." [396]

* * *

"Q. Did Mr. Quigles make a request that Mr. Sommer bring this up through you or was it made directly?

"A. As I understand it, he brought the scratcher up to show to Mr. Quigles and Mr. Quigles asked me while he was there to drop by and let me see it.

"Q. Did he do that? A. He did that.

"Q. And what did he say to you about this Nu-Coil scratcher when he presented it to you?

"A. He said, 'Bert, I want to show a new model scratcher that we have.'

"Q. Did he indicate its use?

"A. That was all he said to me.

"Q. And handed you the scratcher?

"A. Yes, sir.

"Q. Did he say you could have it?

"A. No, sir.

"Q. Did he indicate what you should do with it?

(Deposition of B. J. Dowd.)

"A. No, sir.

"Q. He said nothing about the scratcher but just handed it to you?

"A. That is correct." [397]

* * *

"Q. Mr. Dowd, this order or request of Mr. Quigles' which you testified to relative to the discontinuing the use of Weatherford scratchers; when [397-C] did that take place, approximately?

"A. I don't recall. It was sometime ago, but I do not recall exactly when it was, sir.

"Q. Would you say it was in the year 1949?

"A. It was either in 1948 or 1949. I don't recall whether it was in the latter part of 1948 or in the year 1949, sir.

"Q. You testified that that referred only to the use of Weatherford scratchers; is that right?

"A. That is correct, sir.

"Q. And I believe you testified that in passing on Mr. Quigles' instructions you advised the managers in the field that they could continue the use of Weatherford centralizers; is that correct?

"A. The district managers were the men that I talked to.

"Q. Was anything said about the use of B & W centralizers at that time?

"A. It was stated that they could continue the use of the Weatherford centralizers if they so desired. They were not confined to the Weatherford

"A. I was not involved in it but I have heard that prior to the time that we started using the

(Deposition of B. J. Dowd.)

centralizers. They could use other makes if they so desired.

"Q. There was not anything said specifically then about the use of B & W centralizers, either spiral or straight? [398]

"A. Centralizers—no, sir.

"Q. Had Union Producing Company prior to that time been purchasing any B & W centralizers, to your knowledge?

Weatherford equipment that we had used some B & W centralizers.

"Mr. Scofield: Motion is made to strike the answer as purely hearsay.

"Q. (By Mr. Caughey): You don't know where that was or when it was?

"A. No, sir, I do not. I was not involved in the actual transaction.

"Q. From the time the Union Producing Company began using Weatherford centralizers, it was on or about March, 1947, as you testified, and up to the time Mr. Quigles gave instructions which you testified about, were any B & W centralizers used by Union? A. Not to my knowledge.

"Q. Were any instructions given to you relative to the use of the same during the period, that is, whether or not Union could or could not use B & W centralizers?

"A. As I recall, during that period we were more [399] or less standardized on the Weatherford equipment.

"Q. As far as you know, there were no specific

(Deposition of B. J. Dowd.)

instructions given not to use B & W centralizers during that period?

"A. I didn't give any such orders. I was not requested to.

"Q. You testified that Mr. Scofield and Mr. Hall and a pilot, I believe, you stated, talked with you the latter part of December, 1949?

"A. Yes, sir.

"Q. Which Mr. Hall was that?

"A. I believe it was—I get them mixed up. I believe it was this gentleman sitting here (indicating).

"Q. John Hall, the one sitting in the room?

"A. Yes, sir.

"Q. The pilot was the pilot of some plane they have; is that right?

"A. I assume he was your pilot, Mr. Hall.

"Mr. Hall: Yes.

"Q. (By Mr. Caughey): Where did this meeting take place? A. In my office.

"Q. Was anybody else present except you and the parties mentioned? A. That is all. [400]

"Q. Who talked to you?

"A. Both gentlemen.

"Q. What did Mr. Scofield say?

"A. This is going to be to the best of my recollection.

"Q. Give the substance of it the best you can, of course.

"A. He asked me who gave me this scratcher. He asked me who handled B & W equipment in Shreveport and who was the owner or the manager

(Deposition of B. J. Dowd.)

of the firm and he also told me that he was pretty sure that he was going to want to take my deposition.

"Q. Did he tell you why he was interested in this particular equipment, this Nu-Coil?

"A. He did not say.

"Q. Did you ask him why he was?

"A. No, sir, I didn't.

"Q. How did he happen to see this Nu-Coil in your office?

"A. I showed it to him. I was showing it to Mr. Hall.

"Q. How did you happen to show it to Mr. Hall?

"A. Well, it was there in my office and knowing that he was in that line of business he is interested in that particular type of equipment and I just showed [401] him the new one that I had. I certainly didn't realize I was going to get involved like this in so doing.

"Q. What did Mr. John Hall say when you showed this Nu-Coil scratcher to him?

"A. I don't recall Mr. Hall's comment on it. He was wanting to show me about these tall cement columns he had been able to get on some wells in Canada.

"Q. You don't recall anything he said about the scratcher?

"A. He may have said something, sir. I do not recall it if he did.

"Q. Was anything said about any pending application from the patent office that Mr. Jesse Hall, Sr., might have? A. No, sir.

(Deposition of B. J. Dowd.)

"Q. Or any effect those applications might have on the Nu-Coil scratcher?

"A. To my knowledge, there was nothing mentioned about patents in any way whatsoever.

"Q. Anything mentioned about any claims of any applications? A. No, sir.

"Q. You know Mr. Jesse Hall, Sr.?

"A. I have seen him the one time in Mr. Quigles' office. [402]

"Q. When was that?

"A. It was about the time that we started using their equipment, sir.

"Q. And you haven't seen him, to your knowledge, since that time or talked to him?

"A. No, sir.

"Q. Have you seen John Hall during the year 1949 prior to the time you saw him in your office in the latter part of 1949?

"A. It had been quite sometime since he had been by. It could have been in the early part of 1949. There are people coming in and going out all the time.

"Q. And at any time you talked to Mr. John Hall, did he say anything about any patents or pending applications or any controversies with B & W?

"A. Not that I recall. I imagine anything along that line would have been discussed with Mr. Quigles.

"Q. They didn't discuss it with you?

"A. I don't recall. Of course, I knew all of this was going on.

(Deposition of B. J. Dowd.)

"Q. And when you say 'this,' what do you mean?

"A. I mean the lawsuit.

"Q. In other words, you picked up some general information there was some litigation; is that right? [403]

"A. Due to the ruling of our counsel when Mr. Quigles first called me on the matter.

"Q. Then, as I understand your testimony, Union continued to purchase Weatherford centralizers after the order went out as to the use of Weatherford scratchers? That is, the field was placed in a position where they could purchase them if they wished?

"A. That is correct, sir. We have used both Weatherford centralizers and B & W centralizers.

"Q. Have you seen any field records of where B & W scratchers have been used?

"A. Yes, sir, we have used quite a few B & W scratchers.

"Q. With success? A. Yes, sir.

"Q. With substantially the same success you had when you used Weatherford scratchers?

"A. In my opinion, yes, sir.

"Q. Would that include both the multiflex and the old style scratcher which is known as a wall cleaning guide?

"A. I believe that the majority that we have used have been the wall cleaning guides. I know they are in the majority but just what per cent I couldn't [404] say offhand.

"Q. Then what you might have stated in this article which has been shown to you as far as the

(Deposition of B. J. Dowd.)

use of B & W scratchers, it would apply equally well insofar as results are concerned?

"A. I would think so. I have read other papers along the same line that have been given before various organizations even as to the roller type and the results seem to check fairly well.

"Q. Mr. Dowd, were you familiar with the use by Union of B & W wall cleaning guides on a Union well in Mississippi in 1943, approximately?

"A. No, sir.

"Q. Who would know about that, Mr. Dowd?

"A. 1943—Mr. Quigles was General Superintendent at that time. He would possibly be familiar with it."

* * *

"Q. You have been unable to fix the approximate date when you sent out the instructions or the orders to discontinue the purchase of Weatherford scratchers? [405]

"A. Yes, sir. I just don't recall just when that was.

"Q. Would that day correspond substantially with the date when the company discontinued purchasing the scratchers from Weatherford?

"A. I would say so. I say that for this reason: We did not keep any large stock on hand. We were purchasing those as we needed them on one particular well."

* * *

"Q. You have also indicated to questions on direct and questions on cross-examination that the

(Deposition of B. J. Dowd.)

Union Producing Company follows a procedure in the use of its scratchers. Is that procedure the procedure which is described in the Article which you drafted and which is in evidence here as 'Sommer Deposition Exhibit 1'?"

Mr. Scofield: Which is Plaintiff's Exhibit 85 for identification. [405A]

Mr. Subkow: "A. Generally speaking, yes, sir.

"Q. From whom was that procedure obtained? Do you know?

"A. I know generally, yes, sir.

"Q. What do you know about it?

"A. I believe that that was the method advocated by the Weatherford people when we first started using their equipment.

"Q. And do you use that same procedure in the use of B & W scratchers?

"A. It is a procedure that is generally used on a reciprocating type of equipment, sir.

"Q. My question was, do you use that procedure in the running of your B & W scratchers?

"A. Yes, sir." [406]

* * *

Mr. L. E. Lyon: While we are on that point, it was my understanding from an earlier ruling in this case on one of the motions, that your Honor would not go into the question of the amount of damages at this time, on any phase of this case, but would determine that, if there was a justification for it, the question as to the amount of damages would be referred to a master for an accounting.

The reason I ask that at this time is so that we might be prepared for the type of evidence that we have to put in.

The Court: That is my present view, but of course there must be some showing that there are some damages. [421]

* * *

DEPOSITION OF GEORGE D. FISER

"Direct Examination

"By Mr. Scofield:

"Q. Please state your name?

"A. George D. Fiser.

"Q. Will you give your address here in Shreveport, Mr. Fiser?

"A. United Gas Building, Shreveport, La.

"Q. Do you live in Shreveport? A. I do.

"Q. Are you a lawyer, Mr. Fiser?

"A. Yes, sir.

"Q. Are you employed by the Union Producing Company? A. I am.

"Q. For how long have you been so [443] employed?

"A. I have been employed by the company and predecessors since 1927.

"Q. Does the Union Producing Company have a legal department?

"A. Union Producing Company as such has a legal department in the sense that it participates with an affiliated company and each of the com-

(Deposition of George D. Fiser.)

panies bear a part of the expense. It is not particularly confined to one.

"Q. That is, you maintain a legal department with some other company?

"A. With United Gas Pipe Line Company and United Gas Corporation, all affiliated companies in the legal department.

"Q. Are you the Chief, or head of the legal department of these two companies? A. I am.

"Q. When did you first learn that there was a controversy between the Weatherford Company on one hand, or Mr. Jesse Hall, Sr., and B & W Incorporated on the other hand?

"A. Approximately the latter part of 1948 or early 1949." [444]

* * *

"Q. Are you acquainted with Mr. Jesse Hall, Sr.?

"A. I believe the only member of the Hall family I am acquainted with is this gentleman here (indicating).

"Q. Mr. John Hall?

"A. Mr. John Hall. I believe he is the only one I met.

"Q. Are you acquainted with Mr. Bruce Barkis?

"A. No, sir, I never met Mr. Barkis.

"Q. He never called upon you in your office?

"A. No, sir. [448]

"Q. I believe you said previously you met Mr. Wright for the first time today?

"A. Today I just met him and I don't know if

(Deposition of George D. Fiser.)

you were in here or not. I am not conversant with him.

"Q. I put before you a soft copy of the Wright Patent No. 2,374,317. Was that patent ever shown to you before by anyone? (Handing document to witness.)

"A. No, sir, I have never seen it before.

"Q. I show you a soft copy of the Wright Patent No. 2,392,352. Do you recall ever having seen that patent before? (Handing document to witness.)

"A. No, I don't.

"Q. I show you a copy of the Wright patent No. 2,338,372 and I am showing you the first page of drawings of the patent and you are free to look at the rest of the patent if you care to do so. Do you recall ever having seen that before? (Handing document to witness.)

"A. No, sir, I don't.

"Q. Were you ever shown a settlement contract between Mr. Kenneth Wright and Mr. Jesse Hall, Sr.?

"A. I don't recall ever having seen any such contract.

"Q. Never saw a settlement contract of any sort shown you by either the representatives of B & W [449] or by Jesse Hall or any of the Weatherford Spring Company people?

"A. No, I don't recall having seen that.

"Q. Have you completed your answer?

"A. Yes, sir." [450]

* * *

(Deposition of George D. Fiser.)

"Q. (By Mr. Scofield): Was it you who made the request for the indemnity letter dated January 18, 1949, here marked for identification 'Fiser Deposition Exhibit No. 4'?

"Mr. Caughey: That is objected to as assuming something not in evidence. There is no evidence anybody in Union Producing Company ever made such a request.

"Q. (By Mr. Scofield): Did you make the request, Mr. Fiser? A. I did not.

"Q. Do you know who did?

"A. I do not know that anyone did.

"Q. To your knowledge, no one made the request? A. That is correct. [464]

* * *

"Q. (By Mr. Scofield): To your knowledge, were any threats of infringement made against Union Producing Company by B & W?

"A. No, sir." [465]

* * *

"Q. (By Mr. Scofield): Were any threats made by either the individuals Barkis or Wright?

"A. Not to my knowledge.

"Q. Did you ever tell any of the representatives of the Weatherford Oil Tool or the Weatherford Spring Company that threats had been made by B & W against the Union Producing Company for the infringement of the Wright patents?

"A. No, sir.

"Q. You never made that statement?

"A. No, sir.

(Deposition of George D. Fiser.)

"Q. To anybody connected with Weatherford?

"A. I did not.

"Q. I show you a copy of a letter dated December 11, 1948, addressed to the Union Producing Company and signed by Joe E. Edwards of Vinson, Elkins, Weems and Francis. Did you ever see that letter before?

"Mr. Head: I will instruct the witness—what Mr. Scofield tells me what purports to be a copy of a [467] letter which he demanded by subpoena duces tecum served on the witness Mr. Fiser on January 9th, 1950, that the court ruled that the letter of December 11th, 1948, requested by paragraph 4 of that subpoena, was a privileged communication.

"Mr. Scofield: That I appreciate and I am not asking this witness to furnish copies of the letter nor to testify with regard to the letter. I am merely asking him whether or not he can identify it.

"Mr. Head: I will instruct the witness he does not even have to identify the letter.

"Q. (By Mr. Scofield): What is your answer, Mr. Fiser?

"A. On advice of counsel I will have to decline to attempt to identify the letter.

"Q. Did Mr. Quigles ask you whether or not you could furnish a copy of this letter to Mr. John Hall and get your permission to furnish a copy of the letter which I put before you to Mr. John Hall?

"A. This letter?

"Q. That letter.

"A. Not that I recall. I don't recall.

(Deposition of George D. Fiser.)

"Q. You have no recollection of that?

"A. No, sir.

"Q. I want to be sure you understand my question. [468] The question is, did Mr. Quigles ever ask you whether he could furnish—Mr. Quigles could furnish a copy of this letter of December 11, 1948, to Mr. John Hall when he was in Shreveport?

"A. Not that I recall. I don't remember any such occurrence.

"Q. You have no recollection of it?

"A. No, sir.

"Q. You wouldn't deny, would you, that Mr. Quigles asked your opinion as to whether or not this could be furnished John Hall and you agreed it could be furnished Mr. John Hall?

"A. I will just have to stand on the answer I gave. I don't have any recollection.

"Q. So you do not deny you agreed to have Mr. Quigles furnish a copy of this letter to Mr. John Hall?

"Mr. Caughey: The question is objected to as argumentative. The witness already answered the question that he did not remember. Any subsequent questions are obviously argumentative.

"Q. (By Mr. Scofield): Do you or do you not deny that you approved the furnishing of this letter copy to Mr. John Hall?

"A. I think I have already answered that question because I don't recall. [469]

"Q. Your answer is you have no recollection?

"A. That is correct. I can't go further than that.

(Deposition of George D. Fiser.)

"Q. You recollect, do you not, the meeting we had on December 29, 1949, here in Shreveport?

"A. Yes, sir.

"Q. Do you recollect at that time that I asked you whether or not you would give a deposition in these two cases?

"A. I don't recall you asked me whether I would or not but you asked me, as I recall it, whether arrangements might be made for Mr. Quigles or perhaps some other party. I don't recall you named another party.

"Q. You recall whether I asked you whether or not you would appear and identify some of the letters which passed between you and me?

"A. No, I don't.

"Q. You don't recall that?

"A. I don't recall that." [470]

* * *

DEPOSITION OF W. J. QUIGLES

"By Mr. Scofield:

"Q. Please state your name?

"A. W. J. Quigles.

"Q. Where do you reside, Mr. Quigles?

"A. Shreveport.

"Q. By whom are you employed at the present time? A. Union Producing Company.

"Q. In what capacity?

"A. General superintendent of production and drilling.

(Deposition of W. J. Quigles.)

"Q. How long have you been employed in [482] that capacity? A. Since about 1938.

"Q. Prior to that time were you with the same company? A. Yes, sir.

"Q. How long prior? A. 1916.

"Q. I put before you a reprint of an article which has been identified here as 'Sommer Deposition Exhibit 1' for identification.

"Do you recall that that article appeared in the 'United Gas Log' in the March, 1948, issue? (Handing document to witness.)

"A. I don't know when it was but I remember it being in the 'Log.'"

* * *

"Q. You recall that it did appear in the 'Log'?

"A. Yes, sir.

"Q. Do you know what the procedure is that is described in that article?

"A. Well, it has been so long ago I forgot [483] what it said. That has been two or three years ago. I couldn't say. I don't believe I could answer that.

"Q. The article indicates that the Union Producing Company was having difficulty in the completion of its oil and gas wells prior to March of 1947. Do you have any recollection of that being a fact?

"A. Well, I don't know how to answer that. We are still having trouble, as far as that goes. I would say we have had trouble using casing prior to that time. In fact, we have had trouble ever since we have been using chemical mud.

(Deposition of W. J. Quigles.)

"Q. The article also indicates that there were no squeeze jobs on any new wells between March, 1947, and 1948. Do you recall that to be a fact?

"A. No, I don't.

"Q. You have no recollection of that?

"A. No. You mean we didn't squeeze at all?

"Q. On new wells, the article says.

"A. Well, I don't recall.

"Q. I call your attention on page 8, the back page of this reprint and third from the last paragraph which reads: 'Prior to the adoption of these devices, Union was forced to make many squeeze jobs on wells in order to obtain a successful cement job. Since March of last year, however, it has not been necessary [483-A] for our company to squeeze cement into a single new well.'

"A. I don't recall that.

"Q. Do you know who taught the Union Producing Company this procedure that is described in the article?

"A. Well, I would have to read the article to see. Can I look at it?

"Q. Yes.

"A. I got this from Mr. Hall.

"Q. This procedure was described to you by Mr. Jesse Hall, Sr.?

"A. Yes, sir. That was his recommendation.

"Q. And how did he go about furnishing you the information for this procedure?

"A. I called him up and asked him to come over there, to go over to the office.

(Deposition of W. J. Quigles.)

"Q. And he did come over?

"A. Yes, sir.

"Q. Did you call any of your field men in?

"A. Only ones that was present in the office was mostly young engineers.

"Q. Did you have Mr. Hall describe the procedure to them? A. Yes, he went over it.

"Q. Then did you have Mr. Hall go out in the field [484] and show your field men actually how to operate this procedure?

"A. Not he himself but he sent some representatives.

"Q. That is representatives from his company?

"A. Yes, sir.

"Q. How many wells did they operate for Union Producing Company? A. Who?

"Q. Representatives of Weatherford?

"A. Every time we used their equipment." [485]

* * *

"Q. So that every time you used the Weatherford equipment, Weatherford sent a man on the job?

"A. Wait a minute—to the best of my knowledge they were supposed to have them any way. I don't know whether they did or not. In most cases they did.

"Q. As a result of this educational work that Mr. Hall's company did, or his representatives, the Union Producing Company adopted this procedure as standard procedure? A. In a way.

"Q. What do you mean by 'in a way'?

(Deposition of W. J. Quigles.)

"A. Well, what I mean by that is any service that we get from any people regardless of who it is and what it is they come with and show us how they recommend to do it.

"Q. And Mr. Hall did that in this case?

"A. Yes, sir, not he but his representative." [489]

* * *

"Q. Mr. Quigles, when did you first learn that there was a controversy between B & W and Weatherford over the scratcher situation?

"A. Well, I don't know. It must have been—I don't have any idea. I just couldn't answer [490] that."

Mr. L. E. Lyon: There is only one question and answer which I believe is material from the omitted portion.

Mr. Scofield: I will read it in if you want me to.

Mr. L. E. Lyon: And it is on page 101, line 9, and the answer to that question starting on line 11 of page 101.

Mr. Scofield: That is just before I was going to start, so I will start a question and answer ahead, if you please.

"Q. Mr. Quigles, when did you first learn that there was a controversy between B & W and Weatherford over the scratcher situation?

"A. Well, I don't know. It must have been—I don't have any idea. I just couldn't answer that.

"Q. Your company discontinued buying Weatherford scratchers, did they not? A. Yes, sir.

"Q. How long prior to the time when your com-

(Deposition of W. J. Quigles.)

pany discontinued buying Weatherford scratchers did you learn of this controversy, if you can fix it that way?

"A. I didn't get the question.

"(Whereupon the last question was read by the reporter.)

"The Witness: We learned of the lawsuit in Lake Charles that the B & W would win it in the lower court, that they were going to appeal it and we did not quit the Weatherford scratchers [490-A] until after we got an opinion from our law firm I would say thirty to forty days afterwards." [491]

* * *

"Q. Was Sommer alone when he showed you the [492] letter? A. Yes, sir.

"Q. The letter indicated as you have previously stated that the suit in Lake Charles had to do with scratchers and that B & W had won in the lower court?

"A. As well as I can remember, that is what it said, yes."

* * *

The Court: Then as I understand the stipulation, it is that the so-called centralizers are not involved in this litigation but are the subject matter of the litigation in the case entitled Hall v. Keller, reported in 180 Fed. (2d) 753 in the Fifth Circuit.

Mr. Scofield: They would only be involved in this [493] litigation indirectly in the accounting procedure, and I won't go into that, your Honor.

(Deposition of W. J. Quigles.)

And the discontinuance of the scratchers by the Union Producing Company also affected the centralizer wells, but, as I say, that is not a matter in this lawsuit at the present time.

Mr. L. E. Lyon: Your Honor, I call attention to the fact, again, that the court has asked Mr. Scofield for an answer and he has "yes and no'd." I do not know what his answer was. Your Honor asked him whether it was agreed that centralizers were not in this litigation at all but were the subject matter of the Lake Charles litigation. I do not know what his answer was.

Mr. Scofield: The centralizers were a subject of the Lake Charles litigation.

The Court: That is the case of Hall v. Keller.

Mr. Scofield: Hall v. Keller. And Mr. Lyon just gave the District Court opinion and did not give the Circuit Court of Appeals decision, which perhaps should be added at this point in the record.

Mr. L. E. Lyon: I gave the Circuit Court of Appeals decision and not the lower court decision.

Mr. Scofield: Very well.

The Court: The citation, as I have it, is 180 Fed. (2d) 753, decision of the Fifth Circuit Court of Appeals. [494]

* * *

"Q. Did you give the order to discontinue the purchase of Weatherford scratchers?

"A. I git it in a roundabout way.

"Q. You gave it to Mr. Dowd and Mr. Dowd gave it to your District Managers?

(Deposition of W. J. Quigles.)

"A. That is right.

"Q. And Mr. Dowd has indicated this morning that was done over the 'phone. Did you know that fact?

"A. Well, I was thinking it was done by letter but I guess it was done by telephone.

"Q. Was it this letter that was shown you by Mr. Sommer the circumstance that led you to instruct Dowd to discontinue the purchase of Weatherford scratchers?

"A. It led me to get an opinion from our attorneys to check up and see if there was anything to it and then when I got the word from the attorneys to do it, then I gave it to Dowd.

"Q. Who are these attorneys you are referring to? A. Vinson, Elkins & Weems." [495]

* * *

"Q. I show you a letter dated December 11, 1948. Do you recall that you gave that letter copy to Mr. John Hall when he called upon you on occasion?

"A. Do I have to answer that? If he says I did, I did. I don't know whether I did or not. I give him some letters."

* * *

"Q. At the present time you have no recollection of submitting this particular letter to Mr. Fiser before you gave the copy to Mr. John Hall?

"A. I am sure it came from someone in our law office. I had to copy it off, I suppose."

Mr. Scofield: Skipping then from line 11 on page 105 [496] attorney then.

(Deposition of W. J. Quigles.)

"Q. Wasn't Mr. Fiser your attorney in December, 1948? A. Oh, yes.

"Q. Didn't you submit this letter to Mr. Fiser to get his approval before you gave the copy to Mr. John Hall?

"A. I don't know whether I did or not. In fact, I didn't think he was up there at that time. I still don't think he was. He might have been.

"Q. Whom are you referring to wasn't up there?

"A. Mr. Fiser. In other words, he wasn't general counsel at this time, I don't believe. He might have been but I don't believe he was."

Mr. Scofield: Beginning on line 8, page 105.

"Q. At the present time you have no recollection of submitting this particular letter to Mr. Fiser before you gave the copy to Mr. John Hall?

"A. I am sure it came from someone in our law office. I had to copy it off, I suppose." [496-A]

* * *

"Q. But my question was whether or not you got the approval of Mr. Fiser before you gave it to Mr. Hall. Do you recollect that?

"A. No. In fact, I don't think Fiser was up there. I really don't know.

"Q. Is it your present recollection that Mr. Fiser was not in the office when this letter was given to Mr. John Hall?

"A. I don't think he was our general counsel at that time and I wouldn't have taken it up to him regardless. I don't mean he wasn't up there but he had no connection as general counsel at that time.

(Deposition of W. J. Quigles.)

I don't think he had been made but about a year or a little over, but I don't recall. I can't say for sure.

"Q. Why did you instruct Mr. Dowd to have your different districts discontinue the purchases of Weatherford scratchers?

"Mr. Head: I will instruct the witness the answer to that question involves disclosing [497] communications received from his attorneys and he doesn't have to answer. If it doesn't involve communications from his attorneys the question is proper and he may answer.

"The Witness: I will say it will involve one.

"Q. (By Mr. Scofield): Your answer is it did involve the opinion that you received from your attorneys? A. That is right.

"Q. Then it was based upon the opinion that you received from your attorneys?

"Mr. Head: You don't have to answer that.

"Q. (By Mr. Scofield): What is your answer?

"A. I am not answering.

"Q. On the advice of counsel you refuse to answer? A. Yes.

"Q. On how many occasions did you talk with Mr. Barkis and Mr. Sommer?

"A. When? Any time?

"Q. Subsequent to March of 1947?

"A. I don't believe I have seen them but once together, if that many times. I don't know if I had seen them once—I guess I have once, maybe twice.

"Q. At that time were any patent shown [498] you?

(Deposition of W. J. Quigles.)

"A. No, sir.

"Q. At that time was there a contract between Hall and Wright shown you? A. No, sir.

"Q. Do you now represent that you never have seen the contract that exists between Hall and Wright? A. Yes, sir, I have never seen it.

"Q. And it is your present representation and statement that you have never seen any of the three Wright patents? A. No, sir.

"Q. They have never been shown to you?

"A. No, sir, didn't even know they had one.

"Q. Who was the attorney that came in to see you with Mr. Barkis?

"A. None that I know of.

"Mr. Caughey: That is objected to as a question involving evidence which is not in this proceeding. There is no evidence in this case at all that any attorney visited with Mr. Barkis to Mr. Quigles.

"Q. (By Mr. Scofield): Did an attorney ever visit you with Mr. Barkis? A. No, sir.

"Q. You have no recollection of an [499] attorney being present with Mr. Barkis?

"A. There has never been one with Mr. Barkis, to my knowledge.

"Q. On the occasion, or on one of the occasions when Mr. Barkis visited you, did he show you a letter and have you read it? A. No, sir.

"Q. Did Mr. Barkis on any occasion show you a letter and offer to get you a copy of a letter?

"A. No, sir.

"Q. Did you ever tell John Hall, who is here in the room, that Mr. Barkis showed you a letter?

(Deposition of W. J. Quigles.)

"A. No, sir.

"Q. Was the only letter that you have ever been shown that has to do with the controversy between B & W and Hall or Weatherford Spring, the letter which Mr. Sommer showed you?

"A. That is right.

"Q. Did that letter indicate that B & W was going to permit Hall to make the B & W scratchers?

"A. I don't remember that. I don't know.

"Q. You don't recall that? A. No.

"Q. Did that letter indicate that Weatherford was going to permit B & W to make its [500] scratchers?

"A. I don't remember that. I don't know.

"Q. You don't recall that? A. No.

"Q. Did that letter indicate that Weatherford was going to permit B & W to make its scratchers?

"A. I don't recall.

"Q. You don't recall that? A. No, sir.

"Q. And the only facts that you recall about that letter are the facts that you previously stated with regard to the Lake Charles suit?

"A. That is right. I might add there, as well as I can remember, it was two or three pages on this letter and I only read the front page. I never fooled with that other stuff back there and didn't look at it and what it said in there, I don't have any idea but I believe I gave John Hall a copy of it because he asked me for it and Bill Sommer gave it to me and I gave it to him and I believe that is right. I may be wrong on that, too.

"Q. Do you recall whether that letter stated

(Deposition of W. J. Quigles.)

that B & W and Weatherford had reached a compromise?

"A. No, sir, I don't know. I don't remember. There is something about a compromise in there but I don't remember whether it was in the letter or it [501] wasn't. I don't know whether—I don't remember. There is something about a compromise but I don't remember what it is.

"Q. I put before you, Mr. Quigles, a letter identified here as 'Fiser Exhibit No. 4.' Have you a recollection of having seen that letter before? (Handing document to witness.)

"A. I have seen it before.

"Q. Did you insist John Hall obtain that letter of indemnity for your company?

"A. Not as I remember.

"Q. Did you ever request from Mr. John Hall, Mr. Jesse Hall, Sr., or Mr. Jesse Hall, Jr., that Weatherford Oil Tool give Union Producing indemnification?

"A. No, sir, they did that voluntarily, as I understand it.

"Q. How did you come to that understanding they gave that voluntarily, this indemnity letter?

"A. I take that letter for that.

"Q. And you think the letter indicates that it was given voluntarily? A. Yes, sir.

"Q. And without any request by you for it?

"A. None whatever. [502]

"Q. You received this indemnity letter at Union Producing?

(Deposition of W. J. Quigles.)

"A. I suppose Mr. Fiser received it. I am sure I didn't receive it. I have either seen it or I have been told about it.

"Q. Mr. Bert Dowd produced here this morning a B & W nu-coil type scratcher? A. Yes, sir.

"Q. You are familiar with that?

"A. Yes, sir.

"Q. Do you know where that particular scratcher came from?

"A. Bill Somner brought it up to my office and showed it to me.

"Q. What did he say when he gave it to you?

"A. The way I understood it, it was a new scratcher they were coming out with and I did not know it was on the market until you yourself told me. You bought a couple and then I had to go back and show it to Bert Dowd.

"Q. Why did he give it to you?

"A. He had it in his hand and showed it to me.

"Q. Why did he leave it with you?

"A. I told him to show it to Bert Dowd. I think he left it with Bert Dowd to show the other boys around there just like we would anything else. [503]

"Q. Did he indicate that he was stocking that scratcher in his establishment?

"A. I didn't understand it that way. I thought he was coming out with a new type and hadn't got them in production yet.

"Q. There was a court order issued by Judge Porterie that you produce any correspondence which you had with either B & W Incorporated or

(Deposition of W. J. Quigles.)

with either Mr. Barkis or Mr. Wright. Have you that correspondence with you?

"A. I never had received any as I know of.

"Q. That is your present statement, that you never received a letter from Mr. Wright or Mr. Barkis?

"A. Yes, sir, unless it might have been with some advertisement. It might have been an ad, or something. We get those all the time from different people.

"Q. And you never received any letters from either of those gentlemen or from B & W Incorporated with respect to the infringement of any patents? A. No, sir, never.

"Q. And the only occasion that you ever learned of this situation with regard to B & W was from this letter which Somner showed you?

"A. Yes, sir. [504]

"Q. And it was that circumstance that led you to refer this to your attorneys in Houston?

"A. Yes, sir."

Mr. Scofield: Beginning line 20, page 111:

"Q. Now, isn't it a fact, Mr. Quigles, when you talked to John Hall you had before you a considerable file of B & W letters and correspondence?

"A. If I did, I gave them to him. I think I had the copy he asked me to get and I give him the whole business.

"Q. If you had any before you, you gave it to John Hall?

(Deposition of W. J. Quigles.)

"A. As far as I know, I did. As far as I can remember."

Mr. Scofield: Skipping from line 25, page 111, through line 21 on page 112.

Mr. L. E. Lyon: I will ask that the matter omitted from the record be copied therein as though read, your Honor.

Mr. Scofield: No objection.

The Court: So ordered.

Mr. L. E. Lyon:

"Q. And you give me your assurance you are not withholding any correspondence at the present time? A. No, sir, not that I know of.

"Q. Isn't it a fact that while you were [505] talking to John Hall, during the conversation, that your secretary brought in a letter from Houston from B & W? A. No, sir, not that I recall.

"Q. You have no recollection of that?

"A. No, sir, unless it was some ad, or something.

"Q. And it is your present recollection and statement that all of the correspondence that you have had between B & W or either Mr. Barkis or Mr. Wright was furnished to John Hall?

"A. As far as I know, yes, sir. I didn't get them from those people. I got them from Bill Somner. I didn't get it from B & W and Barkis and Wright.

"Q. I believe you indicated in your previous answers you didn't obtain a copy of this letter from Somner?

"A. I don't think I did, no. I gave it to John Hall.

(Deposition of W. J. Quigles.)

"Q. And you think you gave that letter that Somner showed you to John Hall?

"A. Whatever he gave me I gave to John Hall. I had no use for it."

Mr. Scofield: Beginning line 22, page 112.

"Q. You recall the meeting we had on December 30, 1949, when I was here in Shreveport? [506]

"A. Yes, sir.

"Q. And you recall that I asked you if you would voluntarily give your deposition in this matter and you said you would refer to Mr. Fiser?

"A. That is right.

"Q. And when I left you after our conversation the matter was to be referred to Mr. Fiser?

"A. That is right.

"Q. And you did refer it to Mr. Fiser?

"A. Yes, sir.

"Q. In a letter that Mr. Fiser wrote me on February 7th, in the second paragraph of the letter, Mr. Fiser indicates that we wish to avoid the possibility of being involved in infringement litigation.

"A. That is right.

"Q. Were you apprehensive about the same?

"A. Yes. We didn't want to get mixed up in it."

Mr. Scofield: Then skipping from line 13 on page 113 through line 22 on the same page.

Mr. L. E. Lyon: Okay, go ahead.

(The portion omitted is now included in the transcript as follows:)

"Q. Do you recall a 'phone conversation that

(Deposition of W. J. Quigles.)

you had with Mr. Hall from California in June, 1949, when he asked you if you would come out to the coast to [507] testify in a case?

"A. Yes, sir.

"Q. What was your answer to Mr. Hall?

"A. I told him I wouldn't fly in an airplane for all the lawsuits there was in the United States.

"Q. You told me that at our meeting on December 30th, didn't you?

"A. I told you I wasn't going to ride in no airplane."

Mr. Scofield: "Q. On December 11th, 1948, did you know that the firm of Vinson, Elkins & Weems were representing the B & W in a suit then pending in Houston? A. I was told that." [507-A]

"Q. By whom? A. I don't remember.

"Q. If you didn't consult with Mr. Fiser with respect to giving this letter of December 11th to Mr. John Hall, did you consult with anybody else in the Legal Department of Union Producing?

"A. Yes, sir.

"Q. Who did you consult with?

"A. I just couldn't tell you.

"Q. But you did consult with somebody?

"A. Yes." [508]

* * *

"Q. Did any representative of B & W ever in any conversation with you or in any telephone conversation with you or in any written communication directed to you that you may have seen ever

(Deposition of W. J. Quigles.)

threatened to sue Union Producing Company for patent infringement? A. No, sir." [516]

* * *

"Q. But at this time you haven't any definite recollection as to just what Mr. Hall showed you on this last visit, or what he said?

"A. I sure don't. I know it was about these scratchers and all and I just wouldn't listen to him and told him he would have to see George Fiser.

"Q. Did he tell you at that time B & W was infringing on his rights by manufacturing multi-flexes and he was going to stop them?

"A. I heard him say that, I think, but I don't know whether it was it or not. I don't remember what he said at that time. I just don't remember.

"Q. That language sounds familiar?

"A. Yes, it does. [518]

* * *

"Q. In other words, there was an order issued not to use B & W centralizers?

"A. That is right.

"Q. And that was because of litigation pending?

"A. No; it had nothing to do with litigation.

"Q. Just an order issued?

"A. That is right. I think I am right on that. I hope so. [519]

"Q. You referred to, I believe, Mr. Quigles, to service that was performed by representatives of Weatherford Spring Company or Weatherford Oil Tool Company when you purchased Weatherford scratchers. Were you ever out in the field when these

(Deposition of W. J. Quigles.)

men were out there? A. Yes, once or twice.

"Q. What do these men do in the field? Do they actually put the scratchers on the pipe and tell your men how to operate the casing and just exactly what do they do?

"A. The job I was on was over at Bethany in East Texas and I wasn't there when the scratchers was put on but I am sure they supervised the putting on of the scratchers or the centralizers and Mr. Hall told us, picked the pipe up and passed one scratcher past the other one. In other words, fifteen feet, or whatever the scratchers were for and I had to pick them up forty-five feet. I run that job myself. I wanted to see if they were going to get stuck, or not, and it was raining pretty bad and he was there to supervise it.

"Mr. Scofield: This was Jesse Hall, Sr.?

"The Witness: No; some of his [520] representatives.

"Q. (By Mr. Caughey): Were there some other jobs you may have been on where there were other representatives or the same representative of Weatherford that was there supervising the work?

"A. There were different ones.

"Q. But there was always somebody there?

"A. Yes, sir.

"Q. And they were supervising the use of the scratcher as outlined in that paper which is marked 'Somner Deposition No. 1' for identification?

"A. Yes, sir. [521]

* * *

(Deposition of W. J. Quigles.)

"Q. When you talked to me on December 30th I suggested if you wouldn't voluntarily give your deposition I might have to subpoena you?

"A. Yes, sir.

"Q. You recall what you said then?

"A. In what respect?

"Q. About putting a stop order on all of Weatherford Tools? A. Yes, sir.

"Q. Have you put a stop order on the purchase of all Weatherford tools?

"A. In the majority of the districts, yes.

"Q. In what districts have you put the stop order on Weatherford tools?

"A. Shreveport, Houston, New Orleans.

"Q. Is Corpus Christi included in the Houston district? A. That is the Beeville district.

"Q. Did you put a stop order there yet?

"A. I haven't got to it yet.

"Q. You intend to? A. Yes, sir.

"Q. So, as a result of having subpoenaed you here you now intend to put a stop order on the purchase of [522] all Weatherford centralizers by the Union Producing Company?

"A. I wouldn't say it was on account of the subpoena; on account of the trouble we got in fooling with you people.

"Q. What is this trouble, Mr. Quigles?

"A. Getting in litigation we had no business in.

"Q. Do you consider you are in this litigation?

"A. Yes, sir; I certainly do.

"Q. The fact that you are here today giving

(Deposition of W. J. Quigles.)

your deposition? A. Yes, sir.

"Q. Is it a fact that the thing that projected your referring this matter to your attorney was only the letter that Somner showed you?

"A. Yes, sir.

"Q. That is the only thing?

"A. Yes, sir." [523]

* * *

DEPOSITION OF FRANK ANDERSON GOERNER

"By Mr. Scofield:

"Q. Please state your name? [524]

"A. Frank Anderson Goerner.

"Q. Where do you reside?

"A. In Brookhaven, Mississippi.

"Q. What is your occupation, Mr. Goerner?

"A. I am District Operating Superintendent for the California Company.

"Q. What are your duties with that company, briefly?

"A. Supervision of production in the Brookhaven District.

"Q. Is the company you work for, the California Company, associated with some other company or affiliated with them?

"A. A wholly-owned subsidiary of the Standard Oil Company of California.

"Q. How long have you been employed with the California Company? A. Since 1941.

"Q. Where were you located in the early part of

(Deposition of Frank Anderson Goerner.)

1947? A. In the New Orleans office.

"Q. What capacity?

"A. As Petroleum Engineer.

"Q. And with whom were you associated? Who was your immediate superior? [525]

"A. Well, I was actually—my immediate superior was Mr. E. M. Kipp, who was Chief Engineer but I was assigned to the office of E. J. Deupree who was Division Operating Superintendent.

"Q. Have you ever met Mr. Bruce Barkis?

"A. Yes, sir; I have.

"Q. On how many occasions? A. One.

"Q. Do you recall about when you met him and the circumstances?

"A. To the best of my recollection, it was in the latter part of 1947 while I was employed at the New Orleans office. Mr. Barkis came in and wished to see Mr. Flood or Mr. Deupree but, being unable to see either of them, came into see me. On this occasion Mr. Barkis informed me that the California Company would be subject to fine or other penalty if we did not cease using Weatherford scratchers.

"Q. At that time did he show you any patents?

"A. He showed me several patents which he purported to cover the scratcher field pretty generally and he intimated at that time——

"Mr. Caughey: Just a second. Let us have what he said, not what he intimated. If he said something, let us have what he said. [526]

"The Witness: I am unable to give his exact words.

(Deposition of Frank Anderson Goerner.)

"Q. (By Mr. Scofield): Give it as best you recollect.

"A. It was two years ago, or more. He said his company had the patent on the—I am not sure, I believe it was on the method of application of scratchers and that the use of any other scratchers will be an infringement on their patents.

"Q. Did you make any inquiry from Mr. Barkis after he had told you this?

"A. In what respect?

"Q. As to whether or not the Halliburton or the Hall scratchers were an infringement?

"A. Yes, I did. As I recall it, the words he used were 'manipulating the casing' and I inquired of him at that time if rotating of the pipe came under that definition.

"Q. Why did you inquire whether rotating the pipe came under the definition?

"A. I was mainly interested in knowing whether Halliburton rotary scratchers would be an infringement of their patent since we had considered using them.

"Q. How long was Mr. Barkis in your office talking to you? [527]

"A. Oh, approximately twenty to thirty minutes, I guess.

"Q. I put before you three Wright patents and ask you whether or not he referred to any of these patents when he talked to you? (Handing documents to witness.)

"A. I believe this is the—this is one of the patents he showed me.

(Deposition of Frank Anderson Goerner.)

"Q. Will you give the number of it which appears in the upper right-hand corner?

"A. No. 2374317. He showed me several patents and handed them to me and had me look at them and withdrew them in a big hurry and I couldn't say for sure exactly which ones they are. That appears to me to be the same."

Mr. Scofield: In explanation of that number, your Honor, that number is the Wright patent which is involved in this agreement that we have here.

"Q. As a result of this conversation with Barkis, what did you do then?

"A. I reported the incident to my immediate superior and as a result of that a letter was written to our patent attorney to inquire——

"Q. Who is the patent attorney?

"A. Mr. John Adams. [528]

"Q. Located where?

"A. San Francisco, with the Standard Oil Company of California." [529]

* * *

Mr. Scofield: Line 1, page 130:

"Q. Do you have a copy of the letter with you?

"A. No, I do not. I haven't seen the letter in over two years.

"Q. Do you know what came about as a result of this meeting with Mr. Barkis, that is, to your personal knowledge?

* * *

"Q. I am referring to whether or not there was

(Deposition of Frank Anderson Goerner.)

any action taken by the California Company with respect to these scratchers?

"A. To the best of my recollection the California Company issued orders to all of their field representatives to quit using Weatherford scratchers.

"Q. Did you personally issue the order, or did you see the order?

"A. I saw the order but I didn't issue it. I don't know who did." [530]

* * *

"Q. (By Mr. Scofield): Did you ever see Mr. Barkis on any other occasion after that?

"A. I saw Mr. Barkis at the oil show in Tulsa in the B & W booth. I didn't speak to him. I [531] just saw him. I don't recall having seen him at any other time.

"Q. Have you ever had any conversations with anybody else who was connected with the B & W organization other than Mr. Barkis?

"A. Yes. I don't recall the gentleman's name. He represents B & W in this area and he has called on me several times and I have very pleasant conversations with him.

"Q. Did you ever refer to this conversation you had with Mr. Barkis? A. Yes, I did.

"Q. Do you recall that gentleman's name?

"A. I do not.

"Q. What was your discussions with him about the Barkis interview?

"A. Well, I merely stated I felt like Mr. Barkis insulted me just a little bit in his manner and I

(Deposition of Frank Anderson Goerner.)

think he could have said what he had to say in a much nicer way.

"Q. Why did you feel he had insulted you in the conversation he had with you?

"A. Well, he was just a little bit too firm, I would say, with somebody who didn't have anything to do with what the California Company was using. [531-A]

"Q. What was he firm about and was he firm in the manner in which he was urging the patents?

"A. He was firm in saying we had to stop using the Weatherford equipment." [532]

* * *

"Q. Mr. Goerner, as you stated, you didn't like Mr. Barkis?

"A. Definitely, I did not like him. I didn't know him when he came in.

"Q. As a matter of fact, since that time you have stated that if you had your way you wouldn't use any B & W equipment; is that correct?

"A. Yes, sir. I have stated that other things being equal, if I had my way, I certainly would not let any animosity toward Mr. Barkis keep me from using what I would think would be the best things for the California Company.

"Q. Isn't it a fact you said if you had your way you wouldn't use any B & W equipment?

"A. Other things being equal.

"Q. This letter you wrote, you say, to John Adams of the Patent Department; did you write that [533] after you had conferred with your superiors?

(Deposition of Frank Anderson Goerner.)

"A. Yes, sir; on instructions from my superiors.

"Q. And when do you say that letter was written, to your knowledge?

"A. Latter part of 1947, is the best recollection I have. I don't have any idea as to the date.

"Q. And you say that a stop order was put out, or some kind of order put out with the California Company relating to the use of Weatherford scratchers? A. Yes, sir.

"Q. You saw that order? A. Yes, sir.

"Q. When was it dated?

"A. I have no idea.

"Q. Up to that time there had been no order put out by the California Company relating to the use of Weatherford scratchers?

"A. To the best of my knowledge they never had any.

"Q. Where did you see that letter?

"A. In the New Orleans office.

"Q. Prior to the time it was sent out, or did you get a copy of it yourself?

"A. I doubt if I saw it prior to the time it [534] was sent out. I saw a copy of the letter.

"Q. Due to your position, was a copy of it sent to you?

"A. It was sent through my immediate superior who passed the correspondence on." [535]

* * *

JOHN ALLEN HALL

called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

The Clerk: **State your name in full, please.**

The Witness: John Allen Hall.

The Clerk: And your address?

The Witness: 111 Boundary Street, Weatherford, Texas.

* * *

Direct Examination

By Mr. Scofield:

Q. Where do you live, Mr. Hall? [572]

A. 111 Boundary Street, Weatherford, Texas.

Q. Are you employed at the present time?

A. I am employed by the Weatherford Oil Tool Company.

Q. How were you employed prior to December 15, 1948?

A. I was employed by my father, who was operating as the Weatherford Spring Company.

Q. What were your duties with the Weatherford Spring Company?

A. My duties were the selling of Weatherford scratchers and centralizers, the running of those Weatherford scratchers and centralizers and "keeping our fences mended" in our sales efforts where competition would tend to tear our customers down.

Q. What has been your education, Mr. Hall?

A. I have a high school education, plus one year in college.

(Testimony of John Allen Hall.)

Q. What has been your oil field experience, if any?

A. From the time I was 12 years old, I have worked in the oil fields in the summertime, and also while going to school from junior high school on.

Q. In what capacity?

A. I worked to begin with in a production gang, ordinarily called a "B.S. gang," at Huntington Beach, California.

Q. For some company?

A. For my father, who had the Hall Petroleum at that [573] time.

Q. About what year was that?

A. Oh, that was back in about 1926 or '27; I think the first part of 1927.

Q. And how long did you continue working for your father?

A. I worked for him and with him nearly all my life, even when I was working with other companies, other oil well drilling and production companies.

Q. Did you ever work on a rig where they were drilling a well? A. Yes, I certainly have.

Q. In what capacity did you do that, and when?

A. I started in 1929 working—either in 1929 or in the latter part of 1928, working on a drilling rig at 31st and Linden as a roughneck in Long Beach, California. I was in the eighth—let me see, I just came out of the seventh grade, it was during the summer between my seventh and eighth grades.

Q. In the selling of your father's equipment for

(Testimony of John Allen Hall.)

the Weatherford Spring Company, did you ever have occasion to go to the Union Producing Company at Shreveport, Louisiana?

A. Yes, sir; I have.

Q. Do you recall the first time or the first occasion that you went over there? [574]

A. The first occasion was some time in 1942, I believe, when I called upon Mr. Quigles, and then on numerous occasions after that.

Q. What is the business of the Union Producing Company, if you know?

A. Union Producing Company is a company organized both to drill for oil and gas wells and to produce those wells and I believe also to sell and market gas.

Q. Now, will you state about your first visits to the Union Producing Company and what you did there on behalf of your father?

A. My first visits to the Union Producing Company were rather negative. It is very difficult to sell Mr. Quigles or others in the firm on running scratchers and centralizers—I continued working on him and finally I called on Mr. Quigles and he told me that he had just run——

Mr. L. E. Lyon: Just a moment. We object to any statements or conversations until the proper foundation is laid.

The Witness: Mr. Quigles——

The Court: Just a moment. Give us the time, place, and persons present.

Mr. Scofield: The court asks that you give the

(Testimony of John Allen Hall.)

time, the place, and the persons who were present.

The Witness: Yes.

The Court: You should ask that, Mr. Scofield, before you [575] ask the witness to state a sentence.

Q. (By Mr. Scofield): Will you state, Mr. Hall, about what time this occurred?

A. Possibly in 1943 or 1944, I called on Mr. Quigles.

Q. Where was this, now?

A. At Shreveport, Louisiana—to attempt to again sell him scratchers and centralizers. He at that time told me that he never expected——

Q. Were you there on your father's behalf?

A. That is right. He told me that he never——

Mr. L. E. Lyon: Just a moment. I object on the ground that there has been no proper foundation laid.

The Court: You may proceed.

Q. (By Mr. Scofield): Mr. Hall, who was present during this conversation?

A. Mr. Quigles and myself.

Q. And it took place in Shreveport. Where in Shreveport?

A. In Mr. Quigles'—in the Union Producing Company office there in Shreveport, Louisiana, in their United Gas Building there.

Q. And on these occasions, what were you attempting to do with Mr. Quigles?

A. I was attempting to sell Mr. Quigles on the use of scratchers, of my father's scratchers and spiral centralizers. [576]

(Testimony of John Allen Hall.)

port, Louisiana. Will you proceed and tell what next occurred with [583] respect to your contacts with the Union Producing Company and Mr. Quigles?

A. The following week, after the Shreveport A. P. I. meeting of April 17th or 18th, I believe, I contacted Mr. Quigles in his office at the United Gas Company Building.

Q. What year was this, Mr. Hall?

A. 1946, in May of 1946, and there, of course, I explained the techniques that we had employed with Gulf and compared them with the technique that he had previously used, and attempted to answer his questions as to why the previous technique failed and the technique that we used with Gulf succeeded.

* * *

Q. After this meeting with Mr. Carter and Mr. Quigles, [584] what next did you do with the Union Producing Company?

A. I awaited Mr. Quigles' action, because he had said in that meeting that he would arrange a job for us to supervise the application of the tools with them. So I awaited such time as he would call us to run a job.

Q. Did he call you? A. Yes, he did.

Q. When?

A. He called us during the summer, some time around, I would say, August or possibly September.

Q. Of the same year?

A. Of the same year, 1946, and I met him at a landing down near below Golden Meadows, Louisi-

(Testimony of John Allen Hall.)

ana, and we proceeded out into the ocean there to a rig, I believe in the general—it was in the vicinity of Bay Saint Elaine and it was on Union Producing Company's property there, and we installed the scratchers and centralizers and ran this scratcher and centralizer job.

Q. Did you personally run the job?

A. I did.

Q. Did you run any jobs after that, for Union Producing Company? A. I did.

Q. When?

A. We later received a job to run in East Texas, and [585] I went over to East Texas and ran that job.

Q. Now, briefly, take us down through other such circumstances as you recall where you had some connection with the Union Producing Company.

A. Well, after the first two jobs that I was in with Union Producing Company, my primary effort with them was to see that our men were running the jobs correctly and to contact Union Producing Company, primarily Mr. Quigles and Mr. Bert Dowd, his petroleum engineer, who seemed to be more directly responsible for the jobs than any other engineers, and to see if those fellows were satisfied, and also to add anything to the application of the tools that we could possibly do so.

In the summer, the late summer of 1948, I called on Mr. Bert Dowd in one of these routine calls, and at that time he explained to me that Mr. Barkis had

(Testimony of John Allen Hall.)

been in to see him and had placed before him some patents which he stated that Weatherford Spring Company was infringing. [586]

Q. Before we get into that, did your father have any part at all in the work that you were doing with Union Producing Company between 1946 and 1948? A. Yes, he did.

Q. What part did he play?

A. Mr. Quigles called up our office and asked for him to come over and give a talk to his men and lay down a practice for them to use.

Q. Did you attend that meeting?

A. No, I did not.

Q. All right. Now go back to this talk you had in the summer of 1948 with Mr. Quigles.

A. Rather, with Mr. Dowd.

Q. With Mr. Dowd?

A. Mr. Bert Dowd. Mr. Bert Dowd told me that Mr. Barkis placed before him these patents and Bert Dowd stated that he told Mr. Barkis that he was not interested in any controversy between Weatherford and him, and that Mr. Barkis had pushed the issue and that he finally stood up and stuck out his hand to Mr. Barkis and told him that he didn't have any more time to give him.

Q. What did you do then?

A. I thanked Mr. Dowd for the information that he had given me and I told him that if in any future time, if Mr. Barkis harassed him further, that I would certainly appreciate [587] it if he would let me know because we wanted to keep our skirts

(Testimony of John Allen Hall.)

as clean as possible with Union Producing Company, because we were getting along so well.

Q. Well, what next did you do?

A. At a later date, just after the Lake Charles decision, I contacted Mr. Quigles and——

Q. What year was that?

A. That was in 1948.

Q. What time of year?

A. In, I would say, somewhere around, oh, September or October possibly. It might be the early part of November, but I would rather say that it was September or October. And at that time Mr. Quigles stated——

* * *

Q. (By Mr. Scofield): Mr. Hall, you are now referring to a conversation which you say you had with Mr. Quigles in September or October of 1948. Where was that conversation held? [588]

A. That was held in the office of the Union Producing Company, office building of the United Gas Company and in Mr. Quigles' office.

Q. Who was present?

A. Only Mr. Quigles was present.

Q. With you?

A. With me, yes. In this conversation Mr. Quigles explained to me that—or, rather, Mr. Quigles asked me if we had come into an agreement with B & W to let them manufacture a scratcher like the Weatherford scratcher. And I asked him why he so stated. I told him, "No," that we hadn't, and asked him why he was interested. And he said

(Testimony of John Allen Hall.)

that Mr. Barkis had come to him, very elated, to explain a Lake Charles decision on the spiral centralizer. And he said that Mr. Barkis had advised him that they now owned or at that time owned an interest in the spiral centralizer and that Weatherford and B & W had come to an agreement that B & W could make their type of scratcher and Weatherford could make their type of scratcher. And he asked me if we had come to an agreement with him to make the Multiflex and I said, "No." He said, well, Mr. Barkis had shown him this agreement. And I asked Mr. Quigles then if he would attempt to get that agreement so I could see it and he said he would.

Q. Did he get the agreement for you?

A. No, he didn't. At the next meeting, [589] which——

Q. When was this meeting that you are now speaking of?

A. The next meeting was in the early part of December of 1948.

Q. And where was that meeting held?

A. That meeting was held also in Mr. Quigles' office in the United Gas Building.

Q. And who was present?

A. Mr. Quigles was present there and myself.

Q. Anybody else besides Mr. Quigles and yourself?

A. Well, for a time Mr. Bert Dowd was present also. I went to see Mr. Quigles on a routine call and

(Testimony of John Allen Hall.)

he had just received a letter from their attorneys, Vinson, Elkins & Weems in Houston.

* * *

A. I asked Mr. Quigles for the letter and he said that he would give Vinson, Elkins & Weems permission to give us the [590] letter. And he suggested that I go to Houston and tell Vinson, Elkins and Weems' attorney that was representing Union Producing Company, Joe Edwards, that Union Producing Company would be satisfied with a letter of indemnification; and so I told Mr. Quigles that I would take care of that.

Q. (By Mr. Scofield): Did you go to Houston?

A. Yes, I did.

Q. When?

A. I went to Houston that afternoon and——

Q. That was in December of 1948?

A. That is right; immediately after my conference with Mr. Quigles I went to Houston and saw Mr. Edwards the next day.

Q. Where did you see Mr. Edwards?

A. I saw Mr. Edwards in one of the offices of this Vinson, Elkins & Weems in the Millie Esperson Building. It might have been the Niles Esperson Building. They are both one building, actually. They are joined together there in Houston.

Q. Had you known Mr. Joe Edwards before this?

A. I had not. I had never heard of him before.

Q. Was there anybody present at this meeting that you had with Mr. Edwards?

(Testimony of John Allen Hall.)

A. At this meeting there was only myself and Mr. Edwards.

Q. Was it in Mr. Edwards' office there in the firm? [591]

A. Yes; it was in Mr. Edwards' office with the firm of Vinson, Elkins and Weems.

Q. What was your discussion then with Mr. Edwards?

A. I explained my meeting with Mr. Quigles to Mr. Edwards and told him that Mr. Quigles suggested that we send him a letter of indemnification. And I told him that we would do so, but stated that I would like to lay some background for his own information. And he wanted to know if we had a patent on our scratcher. I told him, "No," but that we had claims. And he asked me what those claims were. I had a copy of the claims in my briefcase and I took the claims out and showed them to him.

From there on I explained to Mr.—I told Mr. Edwards that I wondered why he had made the decision to advise them not to run Weatherford scratchers without contacting us; and he stated that they had been in communication with B & W and that was all that was necessary. And I asked him further, then, that I couldn't understand why he thought it was all that was necessary. And he said that they were thoroughly familiar with the case; that they were also representing B & W. And, of course, at that time I got rather sore because he had led me into showing him these patent claims there.

Q. Did he indicate where he was representing

(Testimony of John Allen Hall.)

B & W, in what litigation?

A. He said in Houston against Weatherford—against [592] Hall.

Q. What did you say to him about this letter that Mr. Quigles had mentioned?

A. I told him that Mr. Quigles had told me to tell him that we could have a copy of the letter, and that if he preferred not to give us a copy, that Mr. Quigles said for him to call him up. Mr. Edwards refused to give me a copy of the letter and also refused to call Mr. Quigles up to verify my statement.

Q. Now, was that the substance of the conversation you had with Edwards there in Houston in December, '48?

A. Yes; other than I told him that we would—in closing, I told him that we would go ahead and send him a letter of—have our attorney send him a letter of indemnification.

Q. Was that done, to your knowledge?

A. It was done at a later date. However, the delaying of sending that letter was—the date of sending that letter was delayed because of a conference that I had with Mr. Quigles immediately after my interview with Mr. Edwards. [593]

Q. (By Mr. Scofield): After seeing Edwards, then what next did you do?

A. I returned immediately to Shreveport.

Q. Now, explain what you mean by "immediately"?

A. Well, I left Edwards' office, went straight to

(Testimony of John Allen Hall.)

the airport, and flew on in to Shreveport, and I contacted Mr. Quigles the next day.

Q. Where did you see him on this occasion?

A. In his office at the United Gas Company Building.

Q. Was this still in December, 1948?

A. It was.

Q. Anybody else there besides Mr. Quigles and yourself?

A. Mr. Bert Dowd was in there during part of the conversation.

Q. All right. Now, give the discussion that you had with Mr. Quigles at this particular meeting.

A. At this meeting I explained to Mr. Quigles that we were going to send the letter of indemnification, but that also I thought that B & W had attempted a sales job through their attorneys, and he asked me why, and I told him that Mr. Edwards had told me, after I had shown him some confidential information, that they were also the attorneys for B & W.

Q. What did Mr. Quigles say about that?

A. Mr. Quigles said that he couldn't hardly believe that. He said that he thought that their first loyalty was to [594] Union Producing Company, and I told him, I says, "Well, if they are going to be disciplined—if Vinson, Elkins & Weems are going to be disciplined for their action, it will be up to you to do so."

Then I asked him, of course, after I had told Mr. Quigles that Mr. Edwards had refused to give

(Testimony of John Allen Hall.)

us a copy of the letter, I asked Mr. Quigles if he wouldn't still give us a copy of the letter, since he had asked me to go ahead and attempt to straighten it out. He said that they were going to have to go on the advice of their attorneys. And so he said that he would, and he called someone on the phone and asked that the letter be copied, since it would be easier to copy it than to photostat it.

Incidentally, I asked him for a photostat first, and he suggested that a copy would be easier to get and "wouldn't a copy be all right" for our use, and I told him that it would, and so he called up and talked to someone and asked that the letter be copied.

Q. Was the copy brought up?

A. Yes, sir. The copy was brought up and I read it over and he suggested that I get my "daddy," that is what he called him, he said, "You and your daddy go down to see our attorneys in Houston and," he said, "I think this thing can be worked out."

Q. Then, did he hand you a copy of that [595] letter? A. Yes, he did.

Q. You might state, Mr. Hall, whether the copy was made there in his office or someplace else?

A. No; it was not made in his office. It was made someplace else in the building.

Q. And did he have the letter in his file or was it in some other file?

A. He had Bert Dowd get a file for him, and I don't know who Bert Dowd got the file from, of

(Testimony of John Allen Hall.)

course, because Bert went out of the room, and in that file was the letter.

Q. Well, did Bert Dowd come back with the file into Mr. Quigles' office? A. Yes, he did.

Q. And was the letter produced there in Mr. Quigles' office before it was copied?

A. Yes, it was, and then Mr. Dowd left with the file.

Q. And did you wait while this was being copied?

A. Yes, I did. I waited with Mr. Quigles and had further discussions with him, primarily on cementing problems.

Q. Did he then deliver the copy to you?

A. Yes. Finally the copy was brought back into the room by a girl and he gave the copy to me.

Q. What did you do with the copy, then?

A. Then, of course, after I read it, I put it in my briefcase, and as soon as I got the opportunity I mailed the [596] copy of that letter to you.

Q. And when did you next see the copy of the letter?

A. I next saw the copy of the letter some time this week in your room.

* * *

Mr. Scofield: Very well. It is requested that the clerk mark the letter as Plaintiff's Exhibit 103 for identification.

The Court: It will be so marked.

(Said document was marked Plaintiff's Exhibit No. 103 for identification.)

(Testimony of John Allen Hall.)

The Court: Is that the copy of the letter that Mr. [597] Quigles gave you?

The Witness: Yes, sir, it is.

The Court: Are you offering it in evidence?

Mr. Scofield: I offer that in evidence, your Honor.

* * *

Q. (By Mr. Scofield): Mr. Hall, did you ever see any of the old-type Wright wall-cleaning guides mounted on casing? A. Yes, sir, I have.

Q. Do you recall the first instance when you saw these [598] wall-cleaning guides mounted on a casing?

A. Yes. It was at the Union Oil Company pipe yard in Santa Fe Springs in late 1940.

Q. How were they mounted?

A. They were welded directly to the pipe.

Q. Did you talk to anybody at the yard—or, first, explain why you were at the Union Oil Company's yard at that time?

A. My father and I had been selling them spiral centralizers and I went out to the Union Oil Company yard at Santa Fe Springs to see Mr. Frank Boyd, and while I was there I saw these scratchers welded on the casing.

Q. And what was your purpose in the call at the Union Company's yard at this time?

A. I had heard they were about to go to the use of B & W scratchers in place of our spiral centralizers, and that was my cause of being there.

Q. And who is Mr. Frank Boyd, do you know?

(Testimony of John Allen Hall.)

A. Mr. Frank Boyd was the general drilling and production superintendent for the Union Oil Company.

Q. Did you talk with him with respect to these scratchers, that is, these Wright scratchers?

A. Yes, only briefly at that time. [599]

* * *

Q. (By Mr. Scofield): Who was present?

A. At that time there was merely Mr. Boyd and myself present.

Q. What date was that?

A. This was on or about December of 1940, December or just before, the latter part of 1940.

In our discussion, he merely pointed out that the scratchers were easier to install than the spiral centralizers, since all they had to do was to weld them directly to the casing. [600]

* * *

Q. (By Mr. Scofield): Well, on this second meeting that you had with Mr. Boyd, was there any discussion concerning the mounting of scratchers?

A. Yes. I drew a comparison between the two mountings, explaining that it was necessary that he not weld our—the Hall scratcher directly to the casing, that it must be put on the pipe free, with lugs above and below, so that in the reversing of the scratcher, when the pipe was picked up after it was let down, that the scratcher would be permitted to walk around the pipe in the hole.

Q. Did he comment as to how Union was then mounting these wall-cleaning guides?

(Testimony of John Allen Hall.)

A. No. He merely stated that he would remember that if he bought any of our scratchers.

Q. Do you know whether or not Union Oil Company continued [601] to mount the wall-cleaning guides permanently on the casing?

A. No. They did not continue to mount them permanently on the casing.

Q. How do you know that?

A. In October of 1941, I called on Mr. Boyd to again——

Q. Now, who was present at this meeting?

A. I called on Mr. Boyd myself this time, by myself.

Q. Where was the meeting?

A. It was at Mr. Boyd's office at Santa Fe Springs, California, at the Union Oil Company there.

Q. Had you had a discussion with regard to mounting the guides at that time?

A. Yes, I did.

Q. And what was that?

A. And he explained to me that they no longer welded, that the B & W scratcher was not so likely to tear up since they no longer welded the scratcher directly to the pipe. He said that he had directed that the scratchers be installed with lugs above and below, not just similar to ours, similar to the Hall installation, but that he had told them to install them a couple of feet apart so that when picking up the pipe they would not reverse the scratcher and tear it up.

Q. Did he indicate to you that he wanted you

(Testimony of John Allen Hall.)

to talk to somebody else of Union with respect to this scratcher proposition? [602]

A. Yes, he did; yes, he did. He requested that—when my father and I called on him in March or April, he suggested that we call on Mr. Phil Jones, who he said was one of their—who he told me was one of their cementing experts at Wilmington, and my father and I went down there to make the call.

Q. Now, you have been describing a wall-cleaning guide and I show you an exhibit and ask you whether you can identify it?

A. Yes. That is the type of scratcher that I saw first out at the Union Oil Company.

Q. Is this the original type of Wright wall-cleaning guide?

A. That is one of the original types. [603]

* * *

Q. (By Mr. Scofield): You have indicated that Mr. Boyd instructed you to go to see someone else in the Union Oil Company. Who was that?

A. Mr. Phil Jones.

Q. Did you go to see Mr. Phil Jones?

A. Yes; my father and I went to see him down at Wilmington.

Q. When was that?

A. That was some time in March or April of 1941.

Q. Why did you go down to see Mr. Jones?

A. I went to see Mr. Jones primarily because Mr. Boyd had suggested that he was the company's cementing expert. [605]

(Testimony of John Allen Hall.)

Q. And what was your conversation with Mr.—first, say who was present?

A. At first there was only myself and Mr. Jones present.

Q. Where was the meeting?

A. It was in the laboratory of the Union Oil Company in Wilmington.

Q. And the date, you say, was April, 1941?

A. It was in March or April of 1941.

Q. All right. What was the substance of your conversation with Mr. Jones?

A. I explained to Mr. Jones that the Weatherford scratcher would reverse. And he asked me why. I had the two halves of the scratcher with me, of one of the scratchers with me, and he told me that he couldn't understand how the scratchers would not hang up like the B & W scratcher hung up.

Q. What do you mean, "hang up"?

A. The scratcher is so constructed, I pointed out to Mr. Jones, that whenever the scratcher is lowered the springs point upwardly and that when the pipe is picked up, then the springs go out against the pipe and operate as a dog to either hang the pipe or bend the spring; in other words, when it went over center.

Q. By "hanging up," do you mean making the pipe stick in the well?

A. Yes. I couldn't seem to get my point over, so I [606] told him that my father was out in the car with a demonstrator and that I would go and get the demonstrator. And so I went to the car, got the demonstrator, my father returned with me, and

(Testimony of John Allen Hall.)

during the meantime Mr. Jones had also called in three or four engineers.

Q. Did you know these men?

A. No. I had never seen them before.

Q. Do you know their names?

A. No; I do not. He called in these engineers and they all observed the demonstration that I put on. I worked the scratcher up and down in the can and Mr. Jones got down and looked at the demonstration very closely and——

Q. Did he comment upon the demonstration?

A. Yes, he did. He said, "I can see now how the scratcher will reverse without tearing itself up." [607]

* * *

Q. Did you ever have occasion to talk to Shell Company? A. Yes, I did.

Q. Who did you talk to in the Shell Company with respect to this scratcher business?

A. In 1946, after the A. P. I. meeting, some time, I would say, in late June or July, I contacted Mr. Bill Bates of the Shell Oil Company in the Los Angeles office. Mr. Bates was at that time in the drilling department and I believe he still is.

Q. And did you have a talk with Mr. Bates?

A. Yes, I did. Mr. Bates——

Q. First, tell me where the conversation took place.

A. The conversation took place in Mr. Bates' office in the Shell Building. He stated——

Q. Here in Los Angeles?

(Testimony of John Allen Hall.)

A. Here in Los Angeles, yes.

Q. And who was present at this meeting?

A. Present at this meeting was only Mr. Bates and myself.

Q. In Mr. Bates' office?

A. In Mr. Bates' office.

Q. All right. Give the substance of the [608] conversation.

A. He said that Mr. Barkis had just been in there and explained the patent controversy between B & W and Weatherford to him. And my first comment was that I didn't know there was any controversy between us. And he started a series of questions directed at me which Mr. Barkis had raised with him.

Q. And what were those questions?

A. He stated that he would like to know whether or not we had a license from B & W to run the Weatherford scratchers. And I said, "Why, certainly we have"—my answer was that certainly we have a license to run them; we had an agreement whereby we had a cross-licensing to certain claims. And he said that wasn't the way Mr. Barkis explained it to him. He said that Mr. Barkis told him that he had only given a limited license to Mr. Hall and Mr. Hall could make his scratchers but that he could not sell them and run them in an oil well without infringing on his method patent. And I told him, "Well, that is the first time that I had heard of that."

Q. What did you do after you heard this from Mr. Bates?

(Testimony of John Allen Hall.)

A. I finished an attempt to explain it and I told Mr. Bates that I would talk to our attorney about it. And he told me, "Better yet, have him contact the Shell attorney." Then he told me, before I left, that he would like to know something else. And I said, "What is that?" And he said that Mr. Barkis had raised the point that since they had been granted the method patent, that they could also stop companies from using the [609] spiral centralizer as well. And Mr. Bates stated that that was something else that he would like to find out; that he wanted to know when we started making the spiral centralizers.

Q. You say this conversation with Mr. Bates was in June or July of 1946? A. Yes.

Q. Did you make any effort to contact your attorney with regard to what Mr. Bates had told you?

A. Yes, I did. I called you by phone and asked you to contact the Shell attorney.

Q. Did you ever have any conversation with anybody in the Standard Oil of California in 1946 or thereabouts? A. Yes, I did.

Q. With whom?

A. I had a conversation with Jules Toussaint and Reece Norton in San Francisco.

Q. When was that?

A. The conversation with them was, I believe, in the spring of 1947 along about the same time of this meeting with Bates.

Q. I understood you to say that you saw Mr. Bates in June or July of 1946?

(Testimony of John Allen Hall.)

A. No; it was later that I saw Reece Norton and Jules Toussaint.

Q. When do you fix the date, now, when you saw them? [610]

A. Well, the first time that I saw them was after I had run the first Union Producing Company job at Bay Sandy Lane.

Q. And that was what date?

A. That was in the summer of 1946.

Q. So this conversation that you had with Mr. Toussaint and this other gentleman was later than the summer of 1947? A. '46. 1946, yes.

Q. '46? A. That is right. It was——

Q. Well, fix the date as best you can.

A. I would say in probably, oh, some time possibly in September or——

Q. Where was the meeting held?

A. The meeting was held in San Francisco in Mr. Toussaint's office and also in Mr. Norton's office.

Q. Who was present?

A. At each of the meetings there was Mr. Norton and myself and Mr. Toussaint and myself.

Q. Do you know what job Mr. Toussaint had with the Standard of California?

A. Yes, he was production manager.

Q. What was Mr. Norton's job?

A. Mr. Norton was Mr. Toussaint's assistant.

Q. All right. Now give the substance of this conversation [611] very briefly.

A. I attempted to sell them on a technique using scratchers and centralizers, which resulted in getting a job in Kettleman Hills.

(Testimony of John Allen Hall.)

Q. All right. Did they mention that Mr. Barkis had seen them.

A. No; not at that time, other than both of them mentioned that they had known Mr. Barkis.

Q. Did you have further conversations with them at a later date? A. Yes, sir.

Q. When?

A. I was making a call in San Francisco regarding these jobs at Kettleman Hills.

Q. Just give me the date, now, about when it was that you saw them again.

A. This was after an A. I. M. E. meeting which was held in the spring of 1946.

Q. What is that, the American Institute of Mechanical Engineers? A. That is right.

Q. What date was this, Mr. Hall?

A. It was held, I believe, in 1947, and this was somewhere along about June or July of '47, I believe.

Q. Where was the meeting held? [612]

A. In San Francisco. I contacted——

Q. In the Standard Company office?

A. Standard Oil Company office, Mr. Reece Norton's office.

Q. Who was present?

A. Just myself and Mr. Norton.

Q. All right. Give me the substance of the conversation.

A. He told me that Mr. Barkis had seen Mr. Jules Toussaint at the A. I. M. E. meeting in Los Angeles and had advised him that there was a patent controversy going on.

(Testimony of John Allen Hall.)

Q. Go ahead.

A. And that it looked like it was going to be necessary for them to stop using Weatherford scratchers and centralizers until the controversy was over. And I told Mr. Norton that I would have you—"have Mr. Scofield, our attorney," contact him.

Q. Now, in your business on behalf of your father when he was engaged in the manufacture and sale of scratchers did you make the rounds selling these scratchers for him?

A. Oh, yes, I did.

Q. And you had occasion to meet the people from these different companies, that is, the purchasing agents and the superintendents who were running these wells?

A. Yes. I was constantly calling on superintendents in [613] the field and purchasing agents in the field, and also in the district divisions and head offices.

* * *

The Court: Let us not be that broad. Now you are going from one extreme to the other. Why don't you ask him if he called upon any other companies which had been doing business with his father and who had ceased doing business?

Mr. Scofield: Yes. I will adopt that.

Q. Did you call upon other companies that were doing business with your father?

A. Yes; I called on numerous other companies.

Q. And in calling on them you were attempting to sell your scratchers? A. Yes. [614]

(Testimony of John Allen Hall.)

Q. Did you on any occasions meet this same situation as you have described in connection with Shell and Standard of California?

A. Yes. There were numerous companies. I couldn't always get the fellows to come out and place themselves right out in the open that Barkis or Wright, either one, had accused them of patent infringement. Usually they would merely state that there was a controversy going on and that they should not want to be involved in it. [615]

* * *

Cross-Examination

By Mr. L. E. Lyon:

Q. Mr. Hall, what is your age? A. 37.

Q. Are you an officer of the Weatherford Oil Tool Company, Inc.? A. I am.

Q. What office do you hold?

A. Vice-president.

Q. How long have you held that office?

A. Oh, let's see, for at least a year.

Q. Did you hold an office with that corporation before that date? [621] A. I did.

Q. Aren't you one of the principal stockholders of the Weatherford Oil Tool Company, Inc.?

A. I am.

Q. How many shares of stock are issued?

A. I don't recall just now.

Q. Has there been any change in the stock issue since it was incorporated? A. Yes.

Q. When? A. Oh, a short time back.

(Testimony of John Allen Hall.)

Q. Who are the stockholders?

A. We will have to go to the record for that.

Q. You are the secretary? A. I am not.

Q. Were you the secretary? A. I was.

Q. When? A. Up until about a year ago.

Q. At that time, who were the stockholders?

A. I will still have to go to the record for that.

Q. Was there a great number of stockholders?

A. No. There weren't a great number.

Q. Was there anyone outside of your family that were stockholders? [622] A. Yes.

Q. Who?

A. I still should consult the record for that.

Q. Have you the record? A. I do not.

Q. Besides yourself, can you name any of the stockholders at the present time, or at the time that you were secretary of the corporation?

A. Yes.

Q. Who were they?

A. At the present time, I know that Jesse Hall, Jr., is a stockholder, John Hall is, that Elmer Hall and that Ruth Hall is.

Q. Any others? A. There could be others.

Q. Well, don't you know whether there are or aren't?

A. No, sir; not without consulting the record.

Q. If there are any more, who are they?

A. We will have to go to the record.

Mr. L. E. Lyon: Well, I will ask that the records be produced, with the witness, an officer, unable to answer at either time.

(Testimony of John Allen Hall.)

Mr. Scofield: I don't have any of those here, the records, your Honor, with regard to who they are.

The Court: Can't you stipulate it? Certainly this is [623] not a matter which you should spend any time on.

Mr. Scofield: I don't see any materiality of it, but certainly we will find out who they are and we will stipulate it.

Mr. L. E. Lyon: I will accept the offer. [624]

Q. When was the Weatherford Oil Tool Company of Weatherford, Texas, incorporated?

A. In 19—I would say in January of 1948—correction.

Q. Who were the original incorporators?

The Court: Don't you have all that information? Can't you ask him leading questions about it: Weren't so and so the original incorporators? Wasn't it incorporated on a certain date? It will all save time.

Mr. L. E. Lyon: Probably I can, your Honor, if I have the papers here.

Q. The three stockholders which formed the Weatherford Oil Tool Company were Jesse Hall, Jr., John Hall and Ben J. Hagman, were they not?

A. That is correct.

Q. And at the time of the incorporation the share distribution was 125 shares to Jesse Hall, Jr.; 124 shares to John Hall, and 1 unpaid-for share to Ben J. Hagman; isn't that true?

A. That was the number of shares.

Q. Who was Mr. Hagman?

A. Mr. Hagman was an attorney.

(Testimony of John Allen Hall.)

Q. He was the attorney for the corporation?

A. That is correct.

Q. The Weatherford Oil Tool Company, Inc., started operations immediately after its incorporation, did it not? [625] A. It did.

Q. And what was its business?

A. Primarily selling scratchers and centralizers and supervising their operation and manipulation in the field.

Q. What relationship was there between Weatherford Oil Tool Company, Inc., at the time of its incorporation and the Weatherford Spring Company?

A. It carried on the work of the Weatherford Spring Company.

Q. Was the business of Weatherford Spring Company in the sale of scratchers and centralizers transferred at that time to Weatherford Oil Tool Company? A. It was.

Q. And the Weatherford Oil Tool Company stopped—I mean, and the Weatherford Spring Company stopped sale both of scratchers and centralizers when that business was taken up by the Weatherford Oil Tool Company; that is correct, is it not?

A. They stopped sale of them in the United States, yes.

Q. I will ask you, Mr. Hall, if this is your signature on page 03 of Exhibit II? A. It is.

Mr. L. E. Lyon: I will offer Exhibit II into evidence as Defendants' Exhibit II.

(Testimony of John Allen Hall.)

Mr. Scofield: No objection except as to materiality. I can't see, unless there is some foundation laid here for what [626] all this is about. I have done nothing on direct.

The Court: What is the purpose of the offer?

Mr. L. E. Lyon: The purpose of the offer is to establish the date more accurately than the statement of the record as to when the Weatherford Spring Company stopped business in the sale of scratchers and centralizers here in question.

The Court: Objection overruled. Exhibit II for identification is received into evidence.

Q. (By Mr. L. E. Lyon): Are you acquainted, Mr. Hall, with the Weatherford Manufacturing Company, Inc.? A. Yes.

Q. Are you a stockholder in that company?

A. I am not.

Q. Have you been at any time? A. No.

Q. The Weatherford Manufacturing Company, does it have any contractual relationship with the Weatherford Oil Tool Company? A. It did.

Q. When?

A. From the beginning of the life of the Weatherford Oil Tool Company, I believe.

Q. And what was that contractual relationship?

A. They manufactured scratchers and centralizers for the Weatherford Oil Tool Company. [627]

Q. Has the Weatherford Oil Tool Company itself at any time ever manufactured scratchers or centralizers? A. Yes.

Q. When?

A. They are manufacturing them now.

(Testimony of John Allen Hall.)

Q. Since when?

A. Since the date of consolidation of the two companies.

Q. You mean the Weatherford Manufacturing Company, Inc., and Weatherford Oil Tool Company have been consolidated? A. Yes.

Q. When? A. Here a short time back.

Q. When?

A. I will have to go to the record for the exact date.

Mr. L. E. Lyon: Can you supply that date?

Mr. Scofield: If that is of any importance, your Honor, we will be glad to supply that and stipulate it.

Q. (By Mr. L. E. Lyon): Was the Weatherford Manufacturing Company, Inc., dissolved?

A. It was incorporated into the Weatherford Oil Tool Company.

Q. And no longer exists as an independent organization?

A. It no longer manufacturers scratchers and centralizers.

Q. Well, does it have any existence at all?

A. I believe not. [628]

Q. Are you acquainted with an organization known as the Parker Industrial Products, Inc.?

A. I have heard of it.

Q. What relationship did that organization have with the Weatherford Oil Tool Company or the Weatherford Manufacturing Company?

A. We will have to go to the record for that.

Q. You have no knowledge?

(Testimony of John Allen Hall.)

A. Only such as might be shown up by the record.

Q. Was there any contractual relationship existing at all? A. There probably was.

Q. Did the Parker Industrial Products Company own the property, buildings or machinery, or hold a mortgage on them, that were used by the Weatherford Manufacturing Company?

A. They probably did.

Q. Does Parker Industrial Products Company any longer exist?

A. That we will have to go to the record for.

Q. You have no knowledge. Was the Parker Industrial Products, Inc., consolidated with the Weatherford Oil Tool Company and Weatherford Manufacturing Company?

A. No; not to my knowledge.

Q. And you have no knowledge other than that Parker Industrial Products may have owned the equipment and the [629] buildings and the land of the Weatherford Oil Tool Company or Weatherford Manufacturing Company at one time, is that correct? A. That is correct.

Q. And you don't know whether that still exists or not?

Mr. Scofield: Again, your Honor, I object to the materiality of this. If it is just to establish the time when Jesse Hall ceased doing business as Weatherford Spring Company, why, we are ready to stipulate that.

Mr. L. E. Lyon: It has a great deal to do not only with that, your Honor, but with the proposi-

(Testimony of John Allen Hall.)

tion of testing this witness' recollection. He can testify as to dates and facts of other kinds, but something of this kind he is perfectly willing to state that he don't know.

The Court: If that is the only purpose of it, I think we have had enough of it. If you have some other purpose, to show the relationships of the parties——

Mr. L. E. Lyon: I certainly desire also, your Honor, to show the relationship of these different parties.

The Court: Very well. Objection overruled.

Mr. L. E. Lyon: What was the last question?

(Last question read by the reporter.)

Mr. L. E. Lyon: Your answer?

The Witness: Repeat your question.

Mr. L. E. Lyon: Please repeat the previous question, Mr. [630] Reporter.

(Record read by the reporter as requested.)

A. It may still be correct in part.

Q. Is there any written contract existing between Parker Industrial Products and Weatherford Oil Tool Company?

A. There probably is. We will have to go to the record for the contract.

Q. Do you know who at the present time are the owners of the Parker Industrial Products?

A. No.

Q. Do you know who Odie Gilbert is?

A. Yes.

Q. Who is he?

(Testimony of John Allen Hall.)

A. He was a former superintendent of ours, of the Weatherford Spring Company.

Q. Do you know who—strike that just a moment. Do you know where Mr. Odie Gilbert is at the present time?

A. I presume so. Probably in Weatherford, Texas.

Q. Do you know whether he still has any stock ownership of the Parker Industrial Products?

A. I do not.

Q. Do you know whether he had at any time?

A. I believe he did.

Q. Do you know whether he was acting as an agent in the holding of that stock for your [631] father? A. I do not.

Q. Do you say that he was not?

A. No. I don't say that he wasn't or was.

Q. Do you know who Eileen Kerson was?

A. Yes.

Q. Who was she?

A. She was a Canadian girl who later married my brother, Elmer.

Q. Was she in the employ of the Weatherford Spring Company? A. She was.

Q. In what capacity? A. Secretary.

Q. To whom? A. To Jesse Hall, Jr.

Q. Was that true on November 24th of 1948?

A. I will have to go to the record for that. I feel quite sure she was but we can consult the record.

Q. Do you know who Joel B. Etter was?

A. I do.

(Testimony of John Allen Hall.)

Q. Who was he?

A. He was the office manager for the Weatherford Spring Company and later for the Weatherford Oil Tool Company.

Q. He was at one time a routine investigator for the Internal Revenue Department, was he not? [632]

A. I have heard that.

Q. Is Mr. Etter any longer connected with the Parker Industrial Products?

A. That I don't know.

Q. Is he any longer connected with the Weatherford Oil Tool Company? A. He is not.

Q. He was at one time? A. He was.

Q. In what capacity? A. Office manager.

Q. Until when? A. About a year ago.

Q. When did he start to work for the Weatherford Oil Tool Company?

A. I would say in about 1945, probably.

Q. You know as a matter of fact, do you not, Mr. Hall, that Mr. Etter held any stock that he he held in Parker Industrial Products for the benefit of your father? A. I do not.

Q. You do not. You would say that is not true?

A. I would.

Q. Do you know who Borden Seaberry was?

A. I do.

Q. Who was that? [633]

A. An attorney associated with Mr. Hagman.

Q. And that firm was representing Weatherford Spring Company, was it? A. It was.

Q. Still is? A. It is not.

(Testimony of John Allen Hall.)

Q. When did it cease to represent it?

A. Oh, I would say about a year ago.

Q. In that respect you are stating that in ceasing to represent the Weatherford Spring Company, that it ceased at that time to represent the Weatherford Oil Tool Company, aren't you?

A. I was referring, of course, to the Weatherford Oil Tool Company about a year ago.

Q. Now, who was George Fant?

A. One of our local bankers in Weatherford.

Q. Of what bank?

A. He was at one time with the—well, he was with, I believe it is the Mutual Building and Loan, or one of the loan companies in Weatherford, building and loan company in Weatherford.

Q. Is George Fant in any way associated with Weatherford Oil Tool Company?

A. He is not.

Q. Or Weatherford Spring Company? [634]

A. He is not.

Q. Who is James Doss?

A. President of the Merchants and Farmers Bank.

Q. Who is Mr. R. B. Gibson?

A. One of the employees of the Merchants and Farmers Bank.

Q. Who is Douglas Fain?

A. Douglas Fain was a former resident of Weatherford.

Q. In what capacity was he associated with the Weatherford Spring Company?

A. In no capacity at all.

(Testimony of John Allen Hall.)

Q. Who was Thomas E. Scofield?

A. The attorney for Jesse Hall, Sr.

Q. Who is Thomas E. S-c-h-o-f-i-e-l-d?

A. Attorney for Weatherford Oil Tool Company.

Q. You make no distinction——

A. And for Jesse Hall, Sr.

The Court: Do I understand both Scofields to be one and the same person?

The Witness: Yes, sir.

Mr. L. E. Lyon: I will offer into evidence the charter of the Parker Industrial Products, Inc., as Exhibit KK.

The Court: Received into evidence.

Q. (By Mr. L. E. Lyon): Are you familiar with the organization of the Nevada Leasehold Corporation, Mr. Hall? [635] A. I am not.

Q. Never heard of it?

A. I have heard of it.

Q. What relation does that have to your father or to the Weatherford corporations?

A. Explain what you mean by "what relation."

Q. Well, has it any relation?

A. I would have to go to the record for that.

Q. Does it have any contractual relationship at all? A. At this time?

Q. Yes.

A. I would still have to go to the record for that.

Q. Did it have at any time? A. It did.

Q. What?

A. We will have to go to the record for it.

Q. Well, of what character was the relationship?

A. We will still have to go to the record for it.

Q. You can't state?

A. The particulars of these relationships are complicated.

Q. I am asking you for a general statement of any relationship that the two corporations had.

The Court: Are you asking the witness for his understanding——

Mr. L. E. Lyon: Yes. [636]

The Court: ——or for the fact?

Mr. L. E. Lyon: Yes, your Honor.

The Court: As his understanding?

Mr. L. E. Lyon: His understanding of the fact of the relationship.

The Court: He says he can't testify to the facts, as I understand him.

Mr. L. E. Lyon: Well, the general character of the relationship, your Honor, may be sufficient without demanding the production of any written agreements.

The Witness: I would prefer to go to the written agreements.

Q. (By Mr. L. E. Lyon): Are those written agreements still in existence?

A. What do you mean by "still in existence"?

Q. Are they still—— A. In effect?

Q. ——outstanding obligations?

A. We will have to go to the agreements to find out.

Mr. L. E. Lyon: I will ask that the agreements referred to by the witness be produced.

(Testimony of John Allen Hall.)

Mr. Scofield: I don't see the purpose here, your Honor. I thought he was testing this witness' recollection, and I think he can do that without the agreements. I can't see that they are material here at all.

Mr. L. E. Lyon: Well, the proposition here, your Honor, [637] that we will show the continuous holding out that this was all one organization, always has been; that Jesse E. Hall, Sr., is operating out of all these organizations in spite of the announcement that Weatherford Oil Tool Company has succeeded; that this is an entire interlocked organization.

The Court: Is it your contention that the plaintiff here is still in business?

Mr. L. E. Lyon: What is that?

The Court: Is it your contention that the plaintiff here is still in the business?

Mr. L. E. Lyon: I don't know. I am exploring the facts, your Honor, to determine that.

The Court: We can't gain anything by exploring the facts unless they are material to this case.

Mr. L. E. Lyon: Well, they certainly would be material. In this proposition, we have in the case——

The Court: None of these corporations are parties to this action.

Mr. L. E. Lyon: That is right. And I don't even——

The Court: And neither side has made any move to make any of them parties to this action.

(Testimony of John Allen Hall.)

Mr. L. E. Lyon: That is correct.

The Court: So how are we concerned with any event that transpired subsequent to the time the plaintiff ceased business, if he did? [638]

Mr. L. E. Lyon: I am only concerned with it in this manner, your Honor, and that is, it goes to the continuous allegations and assertions that have been made to the trade concerning the relationship of these parties and Jesse E. Hall concerning the free setting forth, even as late as 1952, of the assertions by Hall that the Weatherford Oil Tool Company structures were sold under license or under an agreement which they have denied as late as a month ago in Houston, Texas, and I am trying to find out what that relationship is. We may not even have the proper parties here before the [639] court.

The Court: The plaintiff contends, as I understand, that he owns this agreement of September 15, 1944, that it is still your agreement, is that correct? Is that correct, Mr. Scofield?

Mr. Scofield: That is correct.

The Court: And the defendants dispute it.

Mr. L. E. Lyon: And that there have been no licenses or attempt to transwer to the present time?

Mr. Scofield: I haven't made any representations as yet.

Mr. L. E. Lyon: Well, you see, your Honor, that is what I am trying to get after. We have a proposition here——

(Testimony of John Allen Hall.)

Mr. Scofield: We have never licensed this or passed this agreement on to anybody.

The Court: Does the plaintiff here, Jesse Hall, contend that he is the sole owner of all the rights——

Mr. Scofield: Under this contract.

The Court: ——of Hall, under the agreement——

Mr. Scofield: That is correct.

The Court: ——in controversy here?

Mr. Scofield: That is correct.

The Court: And that he has transferred nothing in connection with these rights to any other persons?

Mr. Scofield: In respect to this contract, correct.

Mr. L. E. Lyon: Well, your Honor, I will call your attention to a pleading in the Canadian case in which there [640] is attached a showing of a transfer, alleged transfer, of Canadian rights under this agreement for the sum of nine hundred and some dollars a month, by Jesse E. Hall, and that is what I am trying to get at, just that inconsistent position.

The Court: Why don't you put the plaintiff on the stand and ask him about it instead of asking his son about it——

Mr. L. E. Lyon: This witness is supposed to be the operating member of this organization.

The Court: ——when he says he doesn't know. Of course, if you have better means, let us go on to something else, or dispense with his examination

(Testimony of John Allen Hall.)

and stay within the scope of direct here. It is difficult enough to limit these issues. Unless there is some contention made that the plaintiff is no longer the owner of this agreement or all rights under this agreement.

Mr. L. E. Lyon: There is, your Honor.

The Court: Of course, if the plaintiff is not any longer the owner, there may be some necessary parties who are not before the court and who would be indispensable to an adjudication of rights under the agreement. Now, if that is the defendant's contention, of course, this is all relevant to that issue.

Mr. L. E. Lyon: It is very relevant to that issue, your Honor.

The Court: Well, do the defendants contend that this [641] plaintiff here, Jesse Hall, is no longer the owner of all the rights of the party Hall under the agreement of September 15, 1944?

Mr. L. E. Lyon: We maintain this——

The Court: Is that an issue? If it is, we of course try that issue first, and then, if that is true, we do not have the parties here to make an adjudication with reference to it.

Mr. L. E. Lyon: I maintain that that has been developed by pleadings filed in courts other than this, your Honor.

The Court: All right, let us stop right now and direct everything else, the testimony and evidence, to that, solely to that issue. I will try that issue first, and then, if it appears that there are other parties in interest——

(Testimony of John Allen Hall.)

Mr. L. E. Lyon: That is right.

The Court: ——then we might just as well ascertain it at this point and have them brought in.

Mr. L. E. Lyon: Very well.

Q. Are you acquainted with Weatherford Limited of Canada? A. I am.

Q. Is there any existing agreement between Weatherford Limited of Canada and the Weatherford Oil Tool Company? A. There is.

Q. Is there any agreement between Weatherford Oil Tool Company and Weatherford Limited which extends rights to [642] Weatherford Limited of Canada under the agreement of September 15, 1944? A. There are none.

Q. Is there any license agreement of any kind existing between Weatherford Limited and Weatherford Oil Tool Company? A. There is.

Q. What is it?

A. Between Weatherford Limited and Weatherford Oil Tool Company?

Q. Between Weatherford Limited and Weatherford Oil Tool Company. A. No, no.

Q. You stated that you were acquainted with the business of your father, is that true, to the present date? A. In a great part.

Q. You know, then, do you not, that your father executed an agreement with Weatherford Limited of Canada transferring to Weatherford Limited of Canada the rights under the agreement of September 15, 1944, for Canada?

A. We have a document which assigned, and we

(Testimony of John Allen Hall.)

go to the record for the complete details of it.

Mr. L. E. Lyon: All right. I would like the document to be produced. It is very germane to this issue, your Honor.

Mr. Scofield: I will see if we have it here, your Honor.

The Court: There is no need of going ahead with this [643] trial. We are wasting our time if the parties are not before the court.

Mr. Scofield: I think it is proper that that should be determined.

(Mr. Scofield hands document to the clerk.)

The Court: What is this you have handed to the clerk, Mr. Scofield?

Mr. Scofield: I have handed to the clerk a letter dated July 1, 1951, addressed to the Weatherford Limited, of Edmonton, Alberta, signed by Jesse E. Hall, Sr., and accepted by Weatherford Limited.

The Court: Do you offer it in evidence?

Mr. Scofield: I would like to have it marked as Plaintiff's Exhibit No. 105, and if it is determined that this is——

The Court: It is marked Exhibit 105 for identification.

Mr. Scofield: ——material, I shall be glad to offer it.

(Said document was marked Plaintiff's Exhibit No. 105 for identification.)

Mr. L. E. Lyon: I will offer it at the present time, your Honor.

(Testimony of John Allen Hall.)

The Court: May it be stipulated to be a true copy of a letter which was written by the plaintiff here on or about the date it bears?

Mr. Scofield: That is correct. [644]

Mr. L. E. Lyon: Yes.

The Court: And was sent to the addressee on or about that date?

Mr. Scofield: Yes, sir.

The Court: Very well. It will be received in evidence, Exhibit 105 for identification will be received in evidence as defendants' exhibit next in order.

The Clerk: It is marked Defendants' Exhibit QQ in evidence.

(The document referred to, marked Defendants' Exhibit QQ, was received in evidence.)

The Court: Let me see it, Mr. Clerk.

Q. (By Mr. L. E. Lyon): You are the John A. Hall to whom this letter of Exhibit QQ is addressed? A. I am.

Q. Are you an officer of Weatherford Limited?

A. I am.

Q. What office do you hold? A. President.

Q. How long have you been holding that position? A. Ever since its organization.

Q. Are there any other agreements between your father and any other corporation having to do with the agreement of September 15, 1944?

A. There are. [645]

Q. What are they?

A. We will have to go to the record for it. It

(Testimony of John Allen Hall.)

is one with the Weatherford Oil Tool Company.

Mr. L. E. Lyon: I will ask that it be produced.

Mr. Scofield: Have we a copy of it?

I am advised that there is no agreement between the Weatherford Oil Tool Company and the Weatherford Limited at the present time.

Mr. L. E. Lyon: That isn't the question. We asked for the agreement between Jesse E. Hall and Weatherford Oil Tool with respect to the agreement of September 15, 1944, the agreement testified was in existence.

Mr. Scofield: If it is here, your Honor, we will produce it.

I am producing and request that the clerk mark for identification a letter dated October 11, 1951, addressed to the Weatherford Oil Tool Company, signed Jesse E. Hall, Sr., and I will offer it in evidence as Plaintiff's Exhibit——

The Clerk: No. 106.

(Said document was marked Plaintiff's Exhibit No. 106 for identification.)

The Court: Will you stipulate that this is a true copy of the original and that the original was sent by the plaintiff in this action to the addressee thereon named, on or about the date it bears? [646]

Mr. Scofield: Yes, I do.

The Court: Do you accept the stipulation?

Mr. L. E. Lyon: I will accept the stipulation, your Honor, for the purpose of this case.

The Court: Let it be received in evidence as Plaintiff's Exhibit No. 106, Mr. Clerk.

(Testimony of John Allen Hall.)

The Clerk: That is right, your Honor.

(The document referred to, marked Plaintiff's Exhibit No. 106, was received in evidence.)

Q. (By Mr. L. E. Lyon): I hand you, Mr. John Hall, a copy of Exhibit 106 and will ask you if this is the agreement or letter which you referred to as having reference to the contract of September 15, 1944? A. That is correct.

Mr. L. E. Lyon: I ask to see Exhibit 34.

Q. I hand you Exhibit 34 and ask you if this is the agreement which you understood I was speaking of when I spoke of the agreement of September 15, 1944?

A. (The witness examines said document): That is correct, in so far as I read.

The Court: Mr. Scofield, are there any other documents similar to Exhibit QQ which are outstanding, Defendants' Exhibit QQ, the letter to the Canadian company?

Mr. Scofield: Among all the documents between these companies that I recall, your Honor, I think that is the only [647] one that makes mention of the September 15th agreement.

The Court: Doesn't that document extend to the Canadian company a transfer under the agreement?

Mr. Scofield: A license, a license under what Mr. Hall may have, an exclusive license.

The Court: May I see the Exhibit QQ, Mr. Clerk.

The first paragraph states that:

"For the period beginning July 1, 1951, and ending December 31, 1952, I hereby grant Weatherford Limited the exclusive rights vested in me in patents and inventions, including processes, apparatus, products and licenses, including also such rights as were granted me under a contract dated December 15, 1944, between myself and Kenneth A. Wright * * *"

Isn't that a transwer of interest in the contract?

Mr. L. E. Lyon: It is a transfer of the entire contract. Pardon me, your Honor.

Mr. Scofield: No, I don't believe so, your Honor, if you read on, it says, "including also such rights as were granted me under a contract dated December 15, 1944, between myself and Kenneth A. Wright, and you are hereby exclusively licensed to service and sell in Canada any and all products for which I hold such patents, inventions and licensing rights"——

The Court: That is another thought. That is in effect another sentence. I am interested in the first clause. [648]

Mr. Scofield: Yes, sir.

The Court: The first clause is for this period, "I hereby grant Weatherford Limited the exclusive rights vested in me," and so forth, including— "I hereby grant Weatherford Limited * * * such rights as were granted me under a contract dated December 15, 1944, between myself and Kenneth A. Wright"——

Mr. Scofield: You see, he has a number of other patents on other oil well tool equipment.

The Court: I am not interested in that.

Mr. Scofield: I appreciate that.

The Court: I am interested in this one agreement now.

Mr. Scofield: Yes, but under that agreement, those were transferred as well under such exclusive rights in such rights he may have had under the Wright agreement.

The Court: All right. Now, the Weatherford Limited, that corporation, isn't it a party in interest under the agreement of September 15, 1944?

Mr. Scofield: Well, as an exclusive licensee.

Mr. L. E. Lyon: It is more than that.

Mr. Scofield: Certainly Mr. Hall is still holding the equitable—or the legal right in this agreement.

Mr. L. E. Long: I don't so read it, and this was merely——

The Court: As an object of clarity, it narrows the agreement of September, 1944. [649]

Mr. Scofield: Well, that may be, I did not write it.

The Court: So the draftsmen of these documents are positive geniuses for ambiguities.

Mr. L. E. Lyon: May we have this stipulated, that this agreement was written by Jesse E. Hall, Sr., himself?

Mr. Scofield: No, I don't think it was. I cannot stipulate to that.

Mr. L. E. Lyon: Well, ask Mr. Hall. He is here.

Mr. Scofield: I don't suppose, your Honor—that is, this is just my view with regard to this con-

tract, and, as I say, I am not the author of it, that what he evidently was attempting to pass on there was the right in the inventions and such rights as he might have in the contract, give them the exclusive right to sell and distribute in Canada.

Mr. L. E. Lyon: Your Honor, at this time——

Mr. Scofield: And he goes on——

Mr. L. E. Lyon: Pardon me.

Mr. Scofield: Pardon me, Mr. Lyon. He goes on to say there that he would endeaver, to the best of his ability, "to maintain for you all possible protection for such rights granted to you and to carry on, at my own expense, any litigation which is now pending or may result from my endeavors in this respect," which indicates that he still holds interest in this contract.

The Court: Is Jesse E. Hall, Sr., a [650] controlling stockholder in these companies, Mr. Scofield?

Mr. Scofield: No, sir, not to my knowledge.

Mr. L. E. Lyon: Your Honor, that is something we are going to get here, but I would like to offer at this time, and I think it has already been identified as an exhibit in this case, a statement of claim filed in the Exchequer Court of Canada, which is based upon this asserted contract, Exhibit QQ before you, in which they assert——

The Court: Just a moment. Has that document been identified here?

Mr. L. E. Lyon: Yes, your Honor.

Mr. Scofield: It is identified in that——

The Court: Has it been marked as an exhibit?

Mr. Scofield: This is an amended statement of claim. This is an amended statement of claim which has not been identified, this one I have in my hand, your Honor.

The Court: Let it be marked for identification.

Mr. L. E. Lyon: I would like to also offer it in evidence.

Mr. Scofield: I have a copy to mark, too, your Honor, and offer at the proper time, so I have no objection to it.

The Clerk: It will be marked Defendants' Exhibit RR.

The Court: In evidence.

Mr. Scofield: In evidence.

Mr. L. E. Lyon: I will stipulate. [651]

(Said document, marked Defendants' Exhibit RR, was received in evidence.)

The Court: You will stipulate that it is a true copy of whatever it purports to be?

Mr. Scofield: Yes. I would like to see the document first, if I may.

Mr. L. E. Lyon: It is a copy served on us.

Mr. Scofield: Yes, this appears to be a copy of the amended statement of claim. I will stipulate that that is.

The Court: Mr. Clerk, may I see that?

(Said document was handed to the court.)

The Court: This Exhibit RR, being an amended statement of claim in the Exchequer Court of Canada, between Weatherford Limited, plaintiff, and Import Tool Company Limited and others as

defendants, in paragraph 10, pages 3 and 4, asserts:

"The said Jesse E. Hall, by instrument in writing assigned all his rights, in, to and arisng from the said agreement with Kenneth A. Wright dated September 15, 1944, to the Plaintiff and the Plaintiff is now the owner of and is vested with the exclusive license, right and privilege," and so forth.

Mr. Scofield: But that is the allegation evidently that is in the Canadian suit.

Whether this contract does that is a question, I suppose to be determined. [652]

The Court: It is certainly obvious that Weatherford Limited claims an interest.

Mr. Scofield: Claims that interest according to the allegation.

The Court: Does the plaintiff here, Jesse Hall, Sr., deny that the Weatherford Limited has the——

Mr. Scofield: Exclusive rights in Canada.

The Court: ——has the interest which is asserted in paragraph 10 of Exhibit RR?

Mr. Scofield: No. We do not.

The Court: Very well. Then, there is nothing to do but entertain a motion.

Mr. L. E. Lyon: I will make a motion, your Honor, that as long as the president of Weatherford Limited is on the stand here, that they be brought in, either as an involuntary plaintiff or defendant in this action. They are represented by the same counsel.

Mr. Scofield: Mr. Hall, of course, is the only stockholder in Weatherford Limited that is available, and I have no objection to joining him in this action, Mr. John Hall.

The Court: There may be others. Are there any other companies?

Mr. L. E. Lyon: Yes, your Honor, there will be plenty of others, I believe, that will show up before I get through.

The Court: Well, let us don't go ahead. I don't want to [653] waste any more time than we have already wasted in this case. I did not know that there was any question as to the presence here of all the parties in interest.

Mr. L. E. Lyon: Your Honor, this is only matter that has come to us very recently by the filing of this amended statement of claim and action in Canada. We had no information of it before.

Mr. Scofield: That was filed last August, the amended statement of claim.

Mr. L. E. Lyon: The amended statement of claim was not filed last August. This August.

Mr. Scofield: August 5th.

Mr. L. E. Lyon: Of this year.

Mr. Scofield: That is what I say, last August.

Mr. L. E. Lyon: All right. Now, what is the relationship?

The Court: Let us don't go ahead, Mr. Lyon. We are just wasting time. You are just taking a deposition in a case that is not at issue. Under Rule 17(a) this action must be prosecuted in the name of the real party in interest, and the real parties in interest are not here.

Mr. Scofield: Well, we have Mr. John Hall here on behalf of the Weatherford Limited.

The Court: The Weatherford Limited is not a party to this action. [654]

Mr. Scofield: No. You see, this action was filed in 1947, your Honor.

The Court: I understand, and the older it gets, the more complicated it gets.

Mr. Scofield: Yes, that I admit.

The Court: Now, I am going to order this case off calendar, and if you wish to proceed in it, all parties in interest must join in filing an amended and supplemental complaint, which must be short and concise within the rules. If it isn't, I am going to dismiss it. The same way about any answer or counter-claim. And if there is any defect in parties appearing, I am going to dismiss the action for want of prosecution. We have wasted this time. I had hoped that we could dispose of this long-pending litigation. All of this just accents what I said the other day. If the parties to this case are businessmen, they should certainly find some way to untangle this morass which they themselves made, and settle it.

Mr. Scofield: We will file a supplemental complaint in accordance with your suggestion.

The Court: There must be a joinder of all parties who have any interest in this matter.

Mr. Scofield: Yes, I understand, I understand exactly what you say. That is, I will comb these contracts and if there is any place where any interest has been passed along [655] in this Wright agreement, that party will be joined.

The Court: I am going to hold the parties, from now on, to strict observance of Rule 8, to short

pleading. The pleading must set forth "a short and plain statement of the grounds upon which the court's jurisdiction depends, * * * a short and plain statement of the claim," and emphasis on the "short" end of the claim.

Mr. Scofield: Yes, sir. I understand.

Mr. L. E. Lyon: Well, your Honor, a further recess of this case at the present time leaves the defendants here at a great disadvantage in this proposition and certainly it is not the defendants' fault that the proper plaintiff is not before the court.

The Court: Well, the only matter that evens the score, Mr. Lyon, is the fact that it wasn't brought to the court's attention last week, earlier, that there was a claimed defect as to parties in the complaint.

Mr. L. E. Lyon: I am sorry. The proper party to establish the existence of such a thing was not even before the court, I mean on the witness stand. I did it with the first witness available. After all, these things are not self-proving.

The Court: Yes. I understand.

Mr. Scofield: Would you entertain a motion to intervene on behalf of Weatherford Limited? [656]

The Court: There may be others. No. I want these pleadings simplified.

Now, it may be as to the other parties in interest that you gentlemen can work out some stipulation whereby they will subscribe to all the proceedings that have taken place heretofore, up to this time.

Mr. L. E. Lyon: Pardon me for interrupting your Honor, but I can't do anything except place before the court the knowledge that we have. We

have not only the Weatherford Limited. We have the Hall Development Company in Venezuela, the Weatherford Spring Company in Venezuela, we have this question of Parker Industrial Products, Midway Development Company of Puerto Rico, the Weatherford Spring Company of Venezuela, and we have many of those other corporations that I will have to go through the same routine with, that I know very little about except from the assertions that have been made to the trade.

Now, I have a witness on the stand. You can appreciate, your Honor, that I do not wish to make these Hall boys who are not parties to this litigation my witnesses.

The Court: Yes. I am not criticizing anyone.

Mr. L. E. Lyon: But here is the same situation as to all of those companies and I don't know what their situation is. I don't know. I have considered it for some time, ever since this thing has come together, but have been unable to [657] determine the facts other than I am doing, whether or not the proper party was before this court.

Mr. Scofield: To my knowledge, your Honor, the only mention of the Wright agreement in any contract that I know exists is in this Weatherford Limited contract.

Mr. L. E. Lyon: I don't care about that, but there is an entire assignment of the Weatherford Spring Company business, with all of its assets of every kind and character, by Jesse E. Hall here to these different corporations. It is a blanket assignment.

Mr. Scofield: Well, some of them are and some of them aren't. Now, the Parker Industrial Products, your Honor, merely took over certain of the factory facilities. The Weatherford Oil Tool took over the selling and distribution of these things in the United States. The Venezuela Company took over the sale of these products abroad. That was in 1947, prior to the time that this case was ever brought, and they have continued on with the exception of these two cases that we filed in Canada, which were assigned to Hall Development in Canada and were subsequently reassigned to Hall.

The Court: Don't these concerns claim some rights as licensees, or otherwise, pro tanto assignees of Jesse Hall's licenses under the agreement of September 15, 1944?

Mr. Scofield: No, because he doesn't know what he has got in this agreement. [658]

The Court: That is just the point, Mr. Scofield.

Mr. Scofield: Yes.

The Court: You are asking this court as a court of equity to make the declaration. Now, the law requires that any action be prosecuted under the rules in the name of the real parties in interest.

Mr. Scofield: I appreciate that.

The Court: In addition to that, equity requires that if you seek a declaratory judgment, that you have the case in such a posture with respect to parties and subject-matter that the court can make a decree which is effectual.

Mr. Scofield: That is right. That I appreciate.

The Court: Now, it is not up to Mr. Hall to

come here and expect that this Venezuela corporation has no interest under this agreement.

In order to make an effective decree it may be necessary, even so, to have that corporation a party here. Otherwise this will end up by being an ineffectual decree, since, for example, the Venezuela corporation can have another entire record of litigation over what this agreement means.

Mr. Scofield: You understand I have no objection whatsoever to putting any of these companies into this lawsuit and I have no objection to putting any of these contracts in this lawsuit. In fact, we have copies of these contracts here and had intended to put them in, ourselves, in due time, [659] when Mr. Hall testified, when he testified as to what the situation was on December 15, 1948, and thereafter, that is, I intended to take him through that completely, so there wasn't any reason for us not joining here anybody that should be joined. But it was, of course, a duty of mine which I perhaps was remiss in doing, to choose just where these rights went, that is, to look at the contract. It doesn't appear that any rights in this contract went to anybody. But the Venezulan company is selling scratchers and centralizers. Now, whether it is under a right from this Wright contract or whether it is a right direct from Mr. Hall, that is pretty hard to determine.

The Court: Well, if Mr. Hall has any rights, if this contract is in effect, his rights are derived from the contract, aren't they?

Mr. Scofield: His rights are derived, such rights as he has, except——

The Court: Under the contract he assigned all of the inventions to Wright, did he not?

Mr. Scofield: Well, I don't think he did. Mr. Hall was going to testify as regards to that.

The Court: Paragraph 2——

Mr. Scofield: I know the paragraph that you refer to.

The Court: ——which you undoubtedly know by heart by now. [660]

Mr. Scofield: I know it by heart, yes, sir.

The Court: But the contentions of the parties under the contract should be specified with great particularity, and I did not know there was any controversy about that.

Mr. Scofield: Well, I doubted it myself until this came up here.

The Court: I assumed that, as long as this agreement was in effect, whatever right Hall had under these arrangements he had under this agreement by reason of the fact that paragraph 2 of—that was one portion of the agreement that seemed clear to me, and it was the assignment of the inventions by Hall to Wright. That paragraph seems to be clear.

Mr. Scofield: Well, I don't think it is as clear, your Honor, as it appears.

The Court: I am not suggesting that what follows is clear.

Mr. Scofield: I appreciate it.

The Court: And I am not suggesting that all the surrounding circumstances might not work a different result.

The point of it is that anyone who has any rights

under this agreement as an assignee pro tanto of Jesse Hall, no matter what it is, should be a party here, so that if we labor through this, we will put an end to this litigation.

Mr. Scofield: I have no objection to it, your Honor, I am perfectly agreeable to add any of these companies or [661] individuals that have a claim or would appear to have any rights whatever under this Wright contract, I have no objection to putting them in this lawsuit.

The Court: Well, is there a one of them who, if it were adjudicated that this contract were in effect, would not claim to hold some right through Jesse Hall under this contract?

Mr. Scofield: If I understand what you mean, certainly the Weatherford Oil Tool, I suppose, would claim——

The Court: You don't need to go into detail. You don't need to answer the question. I am just suggesting to you.

Mr. Scofield: Yes.

The Court: Suppose it is finally adjudicated that all the rights Hall has in connection with the scratcher he has under this agreement of September 15, 1944, is there one of these companies who would not then say, "Ah, but we hold some rights through Hall, then under that agreement"? [662]

And if that be true, should they not all be here so that any adjudication this court makes as to the rights and duties under this contract shall be binding upon them? That is one of the purposes of declaratory relief is to avoid litigation.

Mr. Scofield: I appreciate that.

The Court: If all we are going to do is spawn more, it is an ineffectual decree.

Mr. Scofield: I appreciate that.

The Court: How much time do you wish to file an amended and supplemental complaint?

Mr. Scofield: Oh, we will do it immediately.

The Court: No, do not do it immediately. Take at least 30 days.

Mr. Scofield: All right.

The Court: I want it to show 30 days' of hard work, careful draftsmanship and no surplus language in it. If there is, I am going to strike it.

It is difficult to follow these contentions. Now, you just told me of one that I did not know about, a contention was made that I did not know there was any contention, that paragraph 2 of this agreement did not mean just apparently what it said.

I think it would be probably good form if you made separate contentions with respect to certain provisions of the agreement, that you specify them seriatum: That here is the controversy [663] and plaintiff contends that under paragraph 2 of that document he has certain rights and certain obligations, or that the defendant has; and then the defendant contends, as you are informed what the situation is, or you merely say that the defendant denies this and leave it to the defendants to set forth what their contentions are. But specify each provision in the agreement so that this entire controversy will be put to an end if there is to be any adjudication at all as to the facts or if this agree-

ment is in force. If it is no longer in force, that is another matter.

Mr. Scofield: I believe I understand what you want and I will certainly prepare something along the lines of your suggestion.

Might I just refer to Mr. Hall for a minute and ask him about it?

The Court: Yes. We will take a recess and I will reconvene after the recess.

(Short recess.)

Mr. L. E. Lyon: If your Honor please, in Exhibit QQ—that is the agreement between Weatherford Limited and Jesse E. Hall, Sr.—it is stipulated that where it says: "A contract dated December 15, 1944," that that is a typographical error and should be "September 15, 1944."

Mr. Scofield: So stipulated, your Honor.

The Court: Very well. [664]

Mr. L. E. Lyon: Your Honor, before going further in this matter I would like to call attention to—I listed in my previous statement several corporations that I know of and it has been called to my attention that there are others, including the Acceptance Corporation of Venezuela——

The Court: Mr. Lyon, will you state on the record every individual, firm or corporation, every legal person, which the defendant contends should be joined in order that all persons interested under that contract of September 15, 1944, be joined?

Mr. L. E. Lyon: I will try to do that, your Honor, as far as I know them.

There is the Weatherford Oil Tool Company, Inc.; Weatherford, Limited; Weatherford Manufacturing Company; Parker Industrial Products; Midway—what is the correct name?

Mr. Wright: Midway Development.

Mr. L. E. Lyon: Midway Development; Hall Development Company of Venezuela; Acceptance Corporation of Venezuela; A. to Z. Import Corporation of Venezuela; Weatherford of Mexico.

I probably have missed some, your Honor, but that is all that I can recall at the present time.

Now, I would like to ask one other thing of the court at this time. There has been recently filed a suit in Houston, Texas, by Weatherford Oil Tool Company for declaratory judgment. [665] I made a motion to transfer the case but Judge Hannay has just denied that motion last week. I believe that he denied it upon this representation which is set forth in the Reply Memorandum filed by Mr. Scofield and another attorney whose name I cannot read, in the Houston case; and this was the statement from that representation:

"It is asserted unequivocally that the plaintiff Weatherford Oil Tool Company, Inc., is operating under a license alleged to be extended under the agreement of September 15, 1944, but no such allegation is found in the complaint. Relying upon this untrue assertion it is stated that a licensee cannot dispute the validity of a patent."

Here we find a witness testifying on the stand that under Exhibit 106 they are operating under such a license.

Now I would like an order of this court staying the prosecution of that case until the determination of this case or until the further order of this court.

The Court: The parties are not before the court here, Mr. Lyon, not before this court.

Mr. L. E. Lyon: The attorneys are before the court, your Honor.

The Court: It seems to me your application should be made there. The motion will be denied.

Mr. L. E. Lyon: I will make the application there, then, [666] your Honor. Thank you.

The Court: How much time does plaintiff wish to bring in all the parties in interest and file an amended and supplemental complaint?

Mr. Scofield: I should like to have 45 days if that is agreeable.

The Court: Is there any objection?

Mr. L. E. Lyon: Well, that seems an undue length of time, your Honor, but I certainly want to get it correct.

Mr. Scofield: We will make it quicker than that if we can.

The Court: Can you make it within 30 days?

Mr. Scofield: I think we can.

The Court: How much time do defendants desire in which to file an amended and supplemental answer and counterclaim if so advised?

Mr. L. E. Lyon: Depending upon the pleading that is filed, your Honor. It may be, as I say, it might possibly be that we will make an application to this court for leave to take discovery depositions before we are really in position to file an answer.

If that is not true, I can file the answer within 20 days afterwards. I do not want this situation to arise again.

The Court: Who brought the action in Houston?

Mr. Scofield: Weatherford Oil Tool, your [667] Honor.

Mr. L. E. Lyon: Weatherford Oil Tool Company through Mr. Scofield.

The Court: Against whom?

Mr. L. E. Lyon: Against B & W, Inc.

Mr. Scofield: To determine the validity and infringement of these patents, that is, the two Wright patents.

Mr. L. E. Lyon: Also the question of alleged anti-trust violation because we are not marking the invoices as you asked this court to enjoin us not to do.

Mr. Scofield: And unfair competition.

The Court: Are you in that case also, Mr. Lyon?

Mr. L. E. Lyon: Yes, your Honor.

The Court: Do you gentlemen ever spend any time trying to settle all these multifarious controveries?

Mr. L. E. Lyon: We have, your Honor.

Mr. Scofield: I have not with Mr. Lewis Lyon. I did with Mr. Caughey.

Mr. L. E. Lyon: Oh, yes, we have.

Mr. Scofield: We went down to Houston on one occasion and we went over here in Mr. Lyon's office on one occasion and tried to work this out.

The Court: You are in the courts of Canada and the courts of Venezuela?

Mr. L. E. Lyon: And Mexico.

The Court: And Mexico. [668]

Mr. Scofield: I am not in the Venezuela case.

The Court: No, but you are interested.

Mr. L. E. Lyon: You have been down there several times.

The Court: The chances are that you will never know who wins.

Mr. L. E. Lyon: That is correct.

The Court: It is just multiplying the confusion. I hope that you gentlemen will spend all the time this week instead of trying the case in trying to settle it.

Mr. L. E. Lyon: I will be certainly glad to sit down and discuss and find out if there is any possible basis.

The Court: I cannot think of any more valuable service that you lawyers could perform for your clients in such a situation as that, which becomes increasingly muddled as time goes on, than to work it out.

This trial will be ordered off calendar and the plaintiff will be granted 30 days leave within which to file an amended and supplemental complaint joining all parties in interest under the contract of September 15, 1944; and the defendants may have 20 days thereafter in which to answer and file any other responsive pleadings they may deem advisable.

Of course, on the other side of the fence we may have some questions whether or not all the parties interested on the defendants' side will be parties to the controversy in court, too. [669]

Mr. Lyon: We have only one corporation, your Honor, and only two parties and their wives interested in that corporation. We have no sales organizations or other parties connected with us here in the United States or in any foreign country, except sales agents as such. [670]

* * *

Mr. L. E. Lyon: I suppose the only purpose for which the documents which have been heretofore marked for identification are received as part of the Exhibit 130 is to complete Exhibit 130, and for no other purposes.

The Court: Yes. They are not received in evidence except as it may aid in an intelligent understanding of the requests. They are the exhibits which are attached to the requests for admissions and marked for identification only, and the admissions which have been rejected.

Mr. L. E. Lyon: I would like to have a statement on the record at this time, your Honor, as to the Exhibit 1 attached [939] to the requests for admissions, Exhibit 130, that it may be specified that the Mr. Schofield referred to in there is Mr. Scofield here representing the plaintiff.

The Court: Will it be so stipulated?

Mr. Scofield: What exhibit is that?

The Court: Apparently Mr. Adams, in Exhibit 1 attached to Exhibit 130, Exhibit 1 having heretofore been marked Exhibit 107 in evidence, the letter of Adams to Subkow refers to Mr. S-c-h-o-f-i-e-l-d.

Mr. Scofield: Yes.

The Court: Do you stipulate that that is none

other than you?

Mr. Scofield: I will so stipulate.

Mr. L. E. Lyon: The same is true with respect to Exhibit 3 to the admissions; that is, the letter of Mr. Adams to Mr. Leonard Lyon.

The Court: Which has heretofore been—

Mr. Scofield: Where is this?

The Court: ——received in evidence as Exhibit 109. Your name is also spelled S-c-h-o-f-i-e-l-d apparently, Mr. Scofield. Do you stipulate to that?

Mr. Scofield: On the last line of the first page.

The Court: Well, wherever it appears.

Mr. Scofield: Yes, that will be so stipulated. It appears on the second page also in the same fashion on two [940] occasions.

The Court: Very well. Wherever it appears the stipulation covers it, I take it?

Mr. Scofield: That is right.

The Court: Exhibits 111 to 117 for identification, attached to Exhibit 130, requests for admissions, also Exhibit 121 for identification, 122 for identification, all of which were offered and rejected, are attached to Exhibit 130 and received in evidence as part of Exhibit 130, and for no other purpose, are in the record also as a request for excluded evidence pursuant to Rule 43(c). [941]

* * *

JOHN ALLEN HALL

recalled as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

The Clerk: Will you state your name, please?

The Witness: John Allen Hall.

(Testimony of John Allen Hall.)

Mr. L. E. Lyon: Before we proceed, your Honor, I think the record should show that this witness is now on cross-examination [968] from the preceding session of this case.

Mr. Scofield: I was just going to suggest that.

Mr. L. E. Lyon: That Jesse Hall, Sr., is on for recross-examination from the preceding session in 1949, never having been excused from the stand.

I do not want it understood that by not raising those points at this time that I am waiving any of those matters, but I will let the case proceed in the best way to get the evidence in.

The Court: Very well.

Mr. Scofield: Well, I will offer Mr. Hall now for further cross-examination if counsel wish to proceed in that fashion.

Mr. L. E. Lyon: If you have more evidence, I suggest that you complete it first.

The Court: Yes, I think that would be more orderly, complete your direct examination in its entirety. There may be some other matters which you wish to cover, since the second amended complaint has been filed since his last appearance on the stand, is that correct? [969]

* * *

Direct Examination

By Mr. Scofield:

Q. Are you an officer of Weatherford, Ltd., of Canada? A. I am. I am president.

Q. I show you a letter agreement dated Decem-

(Testimony of John Allen Hall.)

ber 30, 1952, marked here as Plaintiff's Exhibit 140 for identification, and ask you if you can identify it.

* * *

The Court: Which agreement are you referring to?

Mr. L. E. Lyon: September 15, 1944, agreement.

Mr. Scofield: No, I am not talking about that.

Mr. L. E. Lyon: Well, this was a purported transfer of rights under that agreement.

Mr. Scofield: No, no. I am talking about December 30, 1952, Plaintiff's Exhibit 140.

Mr. L. E. Lyon: That is what I am talking about, too.

The Court: What is it? Is it a purported assignment?

Mr. Scofield: No, sir. No. This is an agreement between Weatherford, Ltd., and Jesse Hall, Sr., extending the rights. [970]

The Court: What is the purpose of it? Chain of title, so to speak?

Mr. Scofield: Well, it is an indication that the rights to Weatherford, Ltd., were extended because the rights under the July 1, 1951, expired in December of 1951 and this extended that.

Mr. L. E. Lyon: Let me see that.

The Court: What rights are you referring to?

Mr. Scofield: I am referring to such rights as Weatherford, Ltd., got from Jesse Hall, Sr.

Mr. L. E. Lyon: That is just the point, your Honor. What are those rights? They are under the

(Testimony of John Allen Hall.)

purported agreement of September 15, 1944. You have so alleged in this statement of claim in this case, in the Canadian case.

Mr. Scofield: Well, let us go back to the September 15th agreement then. I will ask him some questions about the September 15th agreement.

Mr. L. E. Lyon: The same objection applies to that.

The Court: Well, the last question appears to be preliminary and your objection is overruled and the answer may stand.

Q. (By Mr. Scofield): Under what rights did Weatherford, Ltd., of Canada operate?

Mr. L. E. Lyon: That is objected to.

Q. (By Mr. Scofield, continuing): In December or [971] July 1, 1951?

Mr. L. E. Lyon: That is objected to as calling for a legal conclusion of the witness.

The Court: Yes.

Mr. L. E. Lyon: And as incompetent, irrelevant and immaterial.

The Court: In that form, it is sustained.

You may ask him under what claimed rights they purported to operate, under what rights they claimed to operate, or under what claimed rights they did operate, if you so desire.

Q. (By Mr. Scofield): Under what claimed rights did you operate July 1, 1951, the Weatherford, Ltd., of Canada?

Mr. L. E. Lyon: Wait. If these claimed rights are in writing, this is not the best evidence and I

(Testimony of John Allen Hall.)

object to the question on the ground there is no proper foundation laid.

Mr. Scofield: The contract, your Honor, is already in evidence as Defendants' Exhibit QQ.

The Court: Lay the foundation as to whether the claimed rights were oral or not.

Mr. Scofield: He has already testified about this, but I will have him testify again.

Q. I put before you a paper dated July 1, 1951, and ask you if you can identify it?

Mr. L. E. Lyon: What was the question again, please?

(Pending question read by the [972] reporter.)

A. Yes, I can.

Q. (By Mr. Scofield): What is that?

Mr. L. E. Lyon: That is objected to as calling for a legal conclusion of the witness.

The Court: Objection overruled. He may answer. You may answer.

A. This is a document in which Mr. Jesse Hall, Sr., conveyed to Weatherford, Ltd., of Canada, the rights to manufacture and sell scratchers under such patents as he held and such licenses or license as he held. [973]

* * *

Q. (By Mr. Scofield): As Plaintiff's Exhibit No. 81, there was a directive issued by Mr. Foote to Mr. Bohart, [991] reading as follows:

"During the recent Production Research Co-

(Testimony of John Allen Hall.)

ordinating Committee Meeting, it was reported that Canadian Patent No. 472,221 entitled 'Methods of Conditioning and Cementing Wells and Means Therefor' had been issued to Mr. Kenneth A. Wright of B & W, Inc.

"After a study, Mr. Houghton has reached the opinion that this patent covers the method for cementing casing that is being used in Gulf's Canadian operations. Therefore, the use of scratchers other than those sold by B & W, Inc., for casing cementing in Canada would be an infringement of the Wright Canadian patent. Mr. Houghton has the further opinion that we should respect the Wright Canadian patent and not open ourselves to a charge of infringement. For the time being at least, it is indicated that only B & W scratchers should be used for Gulf's casing cementing operations in Canada.

"Mr. Houghton's recommendations on scratching and centralizing equipment for use in the United States and Venezuela were summarized in our letter dated December 2, 1950, and remain unchanged at this writing."

It is signed by Paul D. Foote.

Did this directive, Mr. Hall, in any way affect the business of Weatherford, Ltd., to your [992] knowledge?

* * *

Mr. Scofield: Yes.

Q. Did you do any business with the Gulf Canadian Company prior to this date?

(Testimony of John Allen Hall.)

A. Yes, we were doing a considerable business in the sale of both scratchers and centralizers, too.

Q. Do you have any information as to in what amount of business was done?

A. Yes, I do have information beginning in the month of June, 1950, up until October 31, [996] 1953.

* * *

Q. (By Mr. Scofield): To your knowledge, were you doing business in centralizers with the Gulf Canadian Company?

* * *

A. Yes, we were doing a centralizer business as well as scratcher business with Canadian Gulf.

* * *

Q. (By Mr. Scofield): And what type of scratcher were you selling to the Canadian Gulf Companies?

* * *

Q. (By Mr. Scofield): Prior to July 23, 1951?

A. We were selling the scratcher manufactured by the Weatherford Oil Tool Company at Weatherford, Texas, of the sidewise bristles. [998]

* * *

Q. (By Mr. Scofield): As the result of this directive that was issued by Mr. Bohart what did you do, Mr. Hall?

* * *

A. I contacted my dad and he in turn contacted you. [1001]

* * *

(Testimony of John Allen Hall.)

The Court: Gentlemen, we are going to try this thing and you won't have any secrets left from each other by the time you are through. I do not want anyone complaining, because you are insisting on strict proof and we are going to have strict proof. If it takes us until the end of December, we are going to try this thing. We will have the books of both parties in here, and I do not want any more delay on account of records not being here on Thursday.

I serve warning on you now, you are to have the reocrds here with all the customers you do business with in all types of scratchers and centralizers, both of them, and when you call for them, they are going to be produced.

* * *

The Court: There is no necessity of wasting time trying to do it another way. You get the subpoena for the records you want of B & W and any other concern, and bring your own records here, and let us not have any attempt to resort to [1009] secondary evidence unless it is absolutely necessary.

* * *

The Court: You both have claims here for unfair competition and you both insist on trying them out. We are going to try them out, and I doubt if either side has any business secrets from the other by the time we are through.

* * *

The Court: * * * And I want both sides to have all their records here, with all their dealings with

customers in connection with scratchers and centralizers of all models and kinds since [1010] the beginning up to now, and we won't have any more of this, gentlemen. [1011]

* * *

The Court: What I say applies to all subsidiaries, sales agencies and what-not.

We are not going to quibble over technicalities. If I apprehend one name and it is something else, I expect you to understand we want the records here for both sides.

We will go into this and find out who is engaging in unfair trade practices, if anyone, and what the consequences are. [1013]

* * *

JESSE E. HALL, SR.

the plaintiff herein, recalled as a witness on behalf of plaintiff and plaintiff-interveners, again having been sworn, was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: J. E. Hall, Sr.

* * *

Further Direct Examination

By Mr. Scofield:

Q. Mr. Hall, I am going to examine you on the cause of action of unfair competition and I would like to have you first state whether any of your customers have been charged with infringement by B & W, Inc? A. They have.

(Testimony of Jesse E. Hall, Sr.)

Q. Have you personally been charged with infringement of any B & W patents?

A. I have.

Q. I believe you indicated when you were previously on the stand that you did business as Jesse E. Hall, Sr., doing business as the Weatherford Spring Company, up until December of 1948, is that correct? A. That is. [1045]

Q. After that date of December, 1948, what business did you engage in?

A. I have been engaged in drilling wells; engaged in developing inventions; engaged in licensing inventions to various people, manufacturers; engaged in some real estate business.

Q. What inventions did you have to license, Mr. Hall?

* * *

A. I had patents on spiral centralizers; I had applications on methods of well completion; I had applications on methods of cementing oil wells; I had patents on drill pipe protectors, on drill pipe protector installation equipment; I had patents on drill pipe wipers.

Q. (By Mr. Scofield): Did you have any foreign rights in any of these inventions? A. I did.

Q. And U. S. rights? A. I did.

Q. You have indicated that you licensed these rights [1046] to some companies or individuals?

A. That is right.

* * *

(Testimony of Jesse E. Hall, Sr.)

Q. (By Mr. Scofield): Did you transfer any of these patent rights to any companies?

* * *

A. I have.

* * *

Q. (By Mr. Scofield): Please identify some of these companies to whom you either transferred or licensed these inventions. First, you may state what you licensed or where you licensed United States patent rights or transferred patent rights of the United States.

A. I might omit some that I can't recall, as there is quite a large group to remember it off-handed. I would have to refresh as to them [1047] all.

* * *

JESSE E. HALL, SR.
(Recalled)

The Clerk: You have not been sworn in this case?

The Witness: I have. [1190]

* * *

Direct Examination
(Resumed)

By Mr. Scofield: [1191]

* * *

Q. Now, I will ask the witness, first, if you were the originator of any method for well completions? [1193]

* * *

(Testimony of Jesse E. Hall, Sr.)

A. In 1935, in Bakersfield, California, I conceived the idea of putting cleaning elements on the outside of casing, to be spaced on the casing so that. when run in the well bore, they would come where you would want to cement, and manipulation of the pipe would cause the cleaning of the well bore, the circulation of the mud would carry out the cuttings and at the same time, when the cement was inserted in the casing and circulated around, the cement would get to the bore of the well and cause cleaning of it in a clean state and set that way and make a good bond and also to the casing. That idea was—— [1194]

* * *

The Witness: After using those abrading elements in free jobs, I filed Patent Application Serial No, 388,891, September 3, 1935, and in that application I described the same method that I have just described, and I also described the objects and I also described the performance of something similar, very similar to what I described a while ago but maybe with a better choice of words, which would be the only difference. And that method was used and sold in practically every oil field by me in the entire United States.

I have volumes of sales that I made from 1937, the beginning of '37, to 1940 in almost every oil field in the entire United States, excluding California.

Q. (By Mr. Scofield): Now, you have indicated that this method is disclosed in your application for patent No. 388,891, have you not?

(Testimony of Jesse E. Hall, Sr.)

A. Yes. That application was later moved into a copending application, Serial No. 119,246, January 6, 1937. [1195-1196]

* * *

Q. You have been furnished a file wrapper, marked Exhibit 150 for identification. Is this the file wrapper for patent that you have referred to in one of your previous answers? A. It is.

Q. Where do you find in that file wrapper the description of your process?

A. In the application.

Q. In what part of the application?

A. In the first part of the application.

Q. Will you please read into the record just those paragraphs that have to do with the steps of the process? What are [1197] you referring to now, Mr. Hall?

A. The patent as it issued in the patent.

* * *

Q. (By Mr. Scofield): Is that the same application that is marked Exhibit 150 for identification?

A. That is.

Q. What is the number of the patent which is marked Exhibit 151, which you have before you?

A. No. 2,220,237.

Q. Now, where is the process described in that patent?

A. It is described on page 3, beginning at the bottom of the inner column and between line 65 and line 70. [1198]

* * *

Q. (By Mr. Scofield): Read from Exhibit 151

(Testimony of Jesse E. Hall, Sr.)

just that portion of the patent that has to do with the process that you have described.

* * *

A. "When the cleaners reach the portion of the well that is to receive the cement the casing C may be manipulated to cause the flexible members 11 to scrape the mud away from the wall of the bore. In practice the casing C may be reciprocated or may be reciprocated and rotated so that the leading edges 20 of the members 11 effectively scrape away the layer of mud on the wall of the bore. During upward movement of the casing C and during turning movement of the casing C in the proper direction the leading edges 20 of the members 11 are [1200] particularly effective in scraping away the mud from the wall of the bore. The back twist of the members 11 is such that material thus scraped from the wall of the bore is directed inwardly on the broad surfaces of the members to be carried away by the water or circulating fluid.

"The collars 10 being free for limited vertical movement on the casing C"——

That pretty well carries the method of the cleaning and in projecting the cement.

Q. (By Mr. Scofield): Now, what were you scraping from the bore of the well?

A. Scraping from the bore of the well what is commonly known as the growth, that is, filter-cake growth, the growth of different sediments that is in the mud, as the internal pressure of the well bore is greater than the pressure of the earth which is forcing fluid into the earth, and it causes the bodies

(Testimony of Jesse E. Hall, Sr.)

of the formation, the bodies of the fluid to settle on the well bore and make accumulation, and this is the accumulation we are cleaning off.

Q. Why did you want to remove that accumulation?

A. Because that accumulation would be entombed between the cement and the well bore, and the cement couldn't bond to the well bore.

Q. And what were you using as a scraping device on that casing? [1201]

A. The edge of a spring member that was out against the well bore, which was curved so that it fit the well bore, and with plenty of tension so that it would be against the well bore so that the reciprocation of the pipe, the movement of the pipe, would cause it to abrade the well bore.

The Court: When you are referring to mud, are you referring to drilling mud or are you referring to the formation at the bottom of the well?

The Witness: I am referring to the drilling mud which would be against the formation at the bottom of the well.

The Court: It might cake there?

The Witness: It might cake there. We might simplify that and just call it filter-cake growth. I don't want to be broken down technically on it.

Q. (By Mr. Scofield): Why did you manipulate the casing? That is, you have indicated that in the operation it was reciprocated and rotated. Why was the casing reciprocated and rotated during this operation?

A. In order to give the tool movement.

(Testimony of Jesse E. Hall, Sr.)

Q. Now, to your knowledge, were you the first that had performed that type of operation?

A. I am.

Q. How had they attempted to clean the well bore prior to the disclosure that has been made here?

A. Well, all I can say is that prior to that there had [1202] been reaming methods on bits, reamers, and various different things to run in the drilling pipe which are pulled out and later run in the operations.

Q. But you were the first to put a scraping or abrading element on the outside of the casing to prepare the well bore for cementing?

A. That is right, so far as I can find.

Q. Why was this necessary in this art? Why did you want to clean the well bore and get a cement column? Had there been difficulty theretofore with cementing oil wells?

A. Yes, I had had considerable difficulty in perforating the pipe, backing up. Just before this, it was along in '28, practically all of the wells were set on top of the zones, and many times we wanted to back up from the zone and take another zone, and somebody would come in and discover an oil sand higher than where we had drilled. It was to complete the well, and we wanted to back up, and it became very difficult to get a cement back up around the pipe. It was accomplished sometimes by what we called squeeze jobs.

So I set out to work out a proposition that we could clean the well bore at the same time and prior to the time that the cement has been put there, and

(Testimony of Jesse E. Hall, Sr.)
by cleaning it at the same time, so that we can get a cement job back up around the pipe, and since that begun, I would say that the major, big percentage of all wells is cemented in just that way. [1203]

Q. Did this tool do a centralizing job for the pipe?

* * *

A. It did.

Q. (By Mr. Scofield): You do not pose to be the originator of a centralizer, do you?

A. I do not. They are very old.

The Court: And I take it that the problem arose because of the possible failure of a bond between the formation and the cake of the drilling mud, and the possible failure of the bond between the formation and the drilling mud and the cement?

The Witness: That is in symptoms, Judge, your Honor, but the big problem—of course, that would lead to accumulation from water sand or gas sand to an oil sand, but if you had, as an illustration a half-inch of growth on the well bore that was saturated with water, and the cement would set, you would have a half-inch of distance there, and after that water dried out—when mud dries, it dries down say to an enlargement of about 75 per cent, which would leave a distance in space at the outside of the cement, inside of the bore of the well, which gives communication——

The Court: This drilling mud shrinks?

The Witness: That is right, it shrinks, very much so.

The Court: Is it the purpose of one of these

(Testimony of Jesse E. Hall, Sr.)

scratchers [1204] to mix it all up so that it will adhere?

The Witness: No. The purpose of the scratcher or the centralizer, either one, the spiral centralizer, is to clean the well bore, is to start to dissolving that growth on the well bore so that the circulation carries the growth up and within a reasonable length of time, we usually say 30 or 40 minutes of reciprocation, to dissolve that back to the bore of the well. We can determine when it is clean by the mud screenings on top. Whenever the mud screenings are clean, without any cuttings, we know that we have got our job done with the tool. That is when we get ready to cement.

Mr. Scofield: There has been offered here by the defendants a report of the Jones & Burdine test made by the Union Oil Company at Dominguez Hill in 1939. Were you present at those tests?

The Witness: I was.

Q. (By Mr. Scofield): Was your tool, that is, this spiral centralizer, tested in the Jones & Burdine tests? A. It was.

Q. What other methods, or what methods were used at the Jones & Burdine tests, to your knowledge?

A. The very method that I have just explained.

Q. Were there any other methods used?

A. There were not, unless there was an acid used, which I think there was, an acid used or an attempt to use it, but I [1205] didn't witness that.

Q. Was this process of yours that was used there at the Jones and Burdine test used on any

(Testimony of Jesse E. Hall, Sr.)

other tools besides your own tool, the spiral centralizer? A. It was.

Q. By whom?

A. Well, it was used by Mr. Kenneth Wright. He had what he called a wall-cleaning scratcher or guide, rather.

Q. There has been offered in evidence and I put before you Plaintiff's Exhibit No. 9.

The Court: Is it in evidence?

Mr. Scofield: Yes, sir. It is in evidence.

The Court: That is the certified copy of the Wright Serial No. 291,027?

Mr. Scofield: Yes, it is issued Patent No. 2,338,372, that is the file wrapper of the patent.

Q. Are you familiar with the process that is described in that patent? A. I am.

Q. Will you just briefly describe what it is?

A. The process described in this patent here is putting abrading elements on a liner or pipe to be perforated, to be a liner and to reciprocate and clean the bore of the well so that the oil can be produced from the face of the well bore back through the same string of pipe. [1206]

Q. Is there any cementing operation described in the process of the Wright patent?

A. There is not.

The Court: The Wright patent number?

Mr. Scofield: 2,338,372.

The Witness: There is not.

* * *

Q. How long did you continue to sell the spiral

(Testimony of Jesse E. Hall, Sr.)

centralizer which you have indicated was used as an abrading element in this process?

A. As long as I stayed in business, and then I licensed to Weatherford Oil Tool and others to continue to do so up to now. [1207]

Q. And are these licensees now offering that tool? A. How is that?

Q. And are these licensees of yours still offering that tool? A. That is true.

Q. For this same purpose?

A. That is true.

Q. Now, did you develop any other tool as a supplement for your spiral centralizer?

A. Yes. I developed a scratcher as a supplement to it.

Q. Will you briefly follow the development of your scratcher from its inception?

A. In 1934, I started doing some work on trying to clean the well bore by making a scratcher. In 1935, I made quite a few scratchers and ran them, and I made a radial bristle that stuck straight out; and due to the fact that it did not operate to satisfy me, I, in the same year, developed a spiral centralizer.

At Houston, in 1936, I was selling the spiral centralizer, beginning to sell it, and started at Houston; and for a well-cleaning device, and, to be sure, people called on me with a scratcher that they had and I told them of my experience with the scratcher, that as long as they had a radial bristle that I did not believe it would work, because they caused those dogs to stick the pipe or they would tear themselves

(Testimony of Jesse E. Hall, Sr.)

if you [1208] put them in reverse or if you run them any bigger than the hole, and you would do that because the hold had so many varying sizes.

So I continued on with the spiral centralizer and I did many things with the spiral centralizer, like putting teeth on it and various different things up through 1940. At that time I conceived the idea of making a reversible scratcher, no longer using the radial bristle which I had had bad luck with, and that is the scratcher that I have made and sold through the years, which is a reversible scratcher, the sidewise bristle.

Q. Did you file an application for patent on this scratcher with the sidewise bristles?

A. I did. I filed an application for patent in the United States Patent Office on April 16, I believe, 1941.

Q. I put before you file history——

The Court: Exhibit number?

Q. (By Mr. Scofield, continuing): ——Exhibit No. 1, and ask you if that is the application for patent to which you have just referred?

A. It is.

Q. When did you first make up the scratchers such as are shown in the Plaintiff's Exhibit No. 1 application?

A. You mean the first sample or the first for manufacturing? [1209]

Q. Well, the first sample, to start with, and then when did you begin to manufacture?

A. I worked on this scratcher in several dif-

(Testimony of Jesse E. Hall, Sr.)

ferent forms through the year of 1940 and, as well as I recall, I have several different drawings, several different documents for the exact dates that they were worked on. I would have to refer back to them, as it has been a good many years ago. But most of them were through the year 1940.

Q. Now, did you ever manufacture the scratcher identical to that that is shown in the drawing of that application?

A. No. That was never done.

Q. What was the difference?

A. The difference was only in the difference of the collar and the way the bristles are mounted, no difference in the function of the scratcher.

Q. What do you mean by "the collar and the way the bristle was mounted"?

A. When you go to production methods, it often changes something, not the principles but the way things are put together. Sometimes a person will put a thing together with bolts, sometimes he will put it together with rivets. sometimes he will put it together by welding it, or sometimes he will put it together by putting a plate over something. In other words, when you manufacture, there are many things that we might do. in order to get on production. which are different [1210] from the way you might show a thing other than the principle. The generic principle that is in the scratcher is the same principle as it is manufactured today, with the sidewise bristle.

Q. Was this application, Exhibit No. 1, ever in interference? A. It was.

(Testimony of Jesse E. Hall, Sr.)

Q. With whom? A. Kenneth Wright.

Q. About what date?

A. Around 1943, 1944, and——

Q. Let me see Exhibit No. 67.

At the time of that interference, to your knowledge did Mr. Wright know of your application, Exhibit No. 1? A. Yes, he knew of it.

Q. Was that application discussed with him at any time, to your knowledge?

A. Yes, it was.

Q. Where?

A. In his office or in his attorney's office, William Maxwell.

Q. And what date was that?

A. That was the date of the contract. I would have to see the contract to recall the date.

Q. The contract is dated September 15. 1944.

A. That is the date. [1211]

Q. So you know it to be a fact that, as of that date, Mr. Wright had knowledge of this particular application, Plaintiff's Exhibit 1?

A. I do. [1212]

* * *

Q. (By Mr. Scofield): When did you first start with the manufacture of the scratcher which is shown in the Exhibit 1 application, that is, the sidewise bristles scratchers? [1213]

* * *

A. In the year of 1941.

Q. (By Mr. Scofield): Did you offer it to the trade at that time? A. Yes.

(Testimony of Jesse E. Hall, Sr.)

Q. To whom?

A. Well, various oil companies; the one, the Gulf. I would have to get—practically all that I could contact.

Q. Did you employ the method that you have described with the scratcher that you were selling?

A. I did.

Q. Did you ever submit that method to the Gulf Oil Company? A. I have.

Q. Where?

A. I have submitted to the Gulf in the fields, operated them in the fields.

Q. Did the Gulf adopt that process?

A. They did.

Q. And use your scratchers in that method?

A. They did use both scratchers and centralizers in that method. [1214]

* * *

Q. (By Mr. Scofield): About what date were you advised that the Gulf Oil Company had been notified that their use of your scratchers was an infringement of the Wright method?

A. It was the fore part of 1947. I was doing work for them in Venezuela and we got a telegram that I would have to come back to the United States; there was some question about an infringement matter. So I came back via Pittsburgh and met with the executives of the Gulf out at Harmarville, out of Pittsburgh, and they showed me a notice and told me [1215] that they had been in touch with

(Testimony of Jesse E. Hall, Sr.)

Mr. Wright and his attorneys that they were infringing the method.

* * *

Q. (By Mr. Scofield): Where was the conference held? You said "Harmarville," I believe.

A. At Harmarville.

Q. That is just outside of Pittsburgh?

A. How is that?

Q. Is that just outside of Pittsburgh?

A. About 20 miles. That is where the G.R.&D.C. researches.

Q. What is the G.R.&D.C.?

A. That is the initials to the Gulf Research and Development Company.

Q. And who were present at that conference?

A. Mr. Blaine Westcott, which is now a vice-president, I understand, and Mr. Vollmer, which was one of the head men in charge of development of the G.R.&D.C.; Mr. Kennedy, which is another one of the men in charge of some development in the oil fields, and also Mr. Teplitz; and then there were two or three other men at different times that I don't recall. This conversation—there were a Mr. Foote—this went on [1216] for about two days, I believe it was, and there was several men dropped in and out.

Q. When was this?

A. In '47, the fore part of 1947.

Q. In the spring? A. In the spring.

Mr. Scofield: There is in evidence, Mr. Lyon, these letters to the Standard of California, Plain-

(Testimony of Jesse E. Hall, Sr.)

tiff's Exhibit 44, and the letters to the Shell, Plaintiff's Exhibit 16. The first letter, Plaintiff's Exhibit 44, is dated April 21, 1947; and the second letter is dated July 8, 1946. Are you ready to stipulate at this time that those——

* * *

Mr. L. E. Lyon: They are already in evidence.

Mr. Scofield: Are you ready to stipulate that Plaintiff's Exhibit 44 was a letter that B & W wrote to the Standard of California?

Mr. L. E. Lyon: It is already in evidence and already so agreed, I believe. [1217]

* * *

Mr. L. E. Lyon: I will stipulate that we wrote those letters at that time, but not with reference to what your interpretation of what those letters are is. We wrote the letters.

* * *

Q. First, the letter to the Standard of California, was it called to your attention, Mr. Hall?

A. Yes, they have all been called to my attention.

* * *

Q. (By Mr. Scofield): What did you do about the letter that was sent to the Standard of California? [1218]

A. I went to San Francisco and called upon their attorneys, called upon their manager, I believe, Mr. Toussaint, and I told them that—endeavored to show them that we had been using this method for many years and that they had assurances with my equipment. I did the same thing with the Gulf.

(Testimony of Jesse E. Hall, Sr.)

Q. What did you do about Shell?

A. I have never been able to—I have called upon the Shell many times but I have never been able to have had a conference that I know of with the Shell attorney on the matter.

Q. Did you call this Shell letter to my attention?

A. I did.

The Court: Which letter is that, exhibit?

Mr. Scofield: The letter, about the exhibit 16; that is, he called my attention to the Exhibit 16 letter.

* * *

Q. Did you indemnify these companies? [1219]

A. I did.

* * *

The Court: Is that what you are attempting to show, that Mr. Hall gave letters of indemnity similar to Exhibit 20 to his customers?

Mr. Scofield: Yes, sir.

The Court: Is that correct?

The Witness: It is. [1220]

* * *

The Court: Does it appear in the record that the company, Amerada Petroleum Company, was the customer?

Q. (By Mr. Scofield): Mr. Hall, were you doing business with the Amerada Petroleum Company at the date of this letter? A. I was.

The Court: Exhibit 146?

Mr. Scofield: Exhibit 146.

A. I was.

(Testimony of Jesse E. Hall, Sr.)

The Court: Dated October 23, 1947?

The Witness: Yes, sir.

The Court: Had you been doing business with them for some time?

The Witness: I had.

The Court: How long prior to that time?

The Witness: Well, I couldn't tell you the date.

The Court: Well, about how long, two months or a year?

The Witness: Oh, much longer than that; a number of years.

The Court: Had you been selling them these scratchers?

The Witness: Yes, sir. [1222]

The Court: Prior to October 23, 1947?

The Witness: Yes, sir; scratchers and centralizers, both.

The Court: What was the occasion for sending this letter, Exhibit 146 for identification?

The Witness: I was notified that B & W had give them the notice.

* * *

The Witness: They requested an indemnity.

The Court: Who is "they"?

The Witness: The Amerada people.

The Court: Did they request it in writing? Did you receive a letter from them?

The Witness: My son, John, told me that they required that we send an indemnity letter in to them, and I then turned over what information I had to Mr. Scofield and the letter was prepared.

(Testimony of Jesse E. Hall, Sr.)

The Court: Do you offer the letter?

Mr. L. E. Lyon: Just a moment, your Honor.

Mr. Scofield: I offer the letter as Exhibit [1223] 146.

* * *

Q. (By Mr. Scofield): I put before you Exhibit 147 and ask you if you can identify that as a letter that you sent to the Gulf Oil Company on the date that appears on the letter? A. Yes, sir.

Q. And what was the reason for sending that letter?

A. On account of the notice of infringement by B & W to the Gulf Oil Corporation.

Mr. Scofield: I offer Exhibit 147 in evidence.

The Court: Is there objection?

Mr. L. E. Lyon: I haven't even seen it, your Honor. It is not on their list.

Mr. Scofield: Oh, yes, it is on the list.

The Court: Will you please hand it to counsel?

Mr. L. E. Lyon: If it is on the list, it is not on the one I was looking at. [1225]

As far as the letter being received for the purpose of establishing that they wrote such a letter to the Gulf, offering a letter of indemnification, we have no objection.

Insofar as the statement of the contents of the letter with reference to threats made by B & W, and so forth, we do object to it on the ground it is hearsay.

The Court: You did not offer it, I take it——

Mr. Scofield: I offered it yesterday.

(Testimony of Jesse E. Hall, Sr.)

The Court: It was not offered to prove the statements?

Mr. Scofield: No. Just as to the indemnity to Gulf.

* * *

Q. (By Mr. Scofield): I show you Plaintiff's Exhibits 148 and 149 and will ask you if that is correspondence that you had with The California Company in November of 1947, with regard to threats that were made by B & W to what company?

* * *

The Witness: Yes. This is the letter that caused the indemnity letter which followed a couple of days later.

The Court: In other words, Exhibit 148 for identification [1226] is a letter dated November 18, 1947, from one Bell to Weatherford Spring Company. Who is Bell?

The Witness: He is of the Standard Oil.

The Court: Is he an officer of this California Company? [1227]

* * *

Q. (By Mr. Scofield): As a result of these notices, did you have any communication with Mr. Wright and with Mr. Barkis?

* * *

The Witness: I did.

Q. (By Mr. Scofield): And did I come to the California Club here in Los Angeles and have a conference with them, some time in August, 1946?

* * *

(Testimony of Jesse E. Hall, Sr.)

The Court: Very well. There is a stipulation made that you, Mr. Scofield, subsequent to those instructions from Mr. Hall, came to Los Angeles and held a conference at the California Club with the defendants or with their representatives. [1228]

Mr. Scofield: And will also stipulate that at that time I furnished Mr. Wright with a copy of the Hall application No. 627,013, which is here in evidence as Plaintiff's Exhibit or as Defendant's Exhibit K in evidence. [1229]

* * *

Q. (By Mr. Scofield): Up to the time of this conference on August 27, 1946, had Mr. Wright ever made any charge of fraud against any applications that you had pending?

* * *

The Witness: He had not. [1232]

* * *

Q. (By Mr. Scofield): Had he up to the time of this conference on August 27, 1946——

* * *

The Court: Was your memorandum made before the conference or after the conference?

Mr. Scofield: After the conference.

The Court: Well, according to the list of exhibits. Exhibit 171 now in evidence is a Scofield memorandum of August 26th.

Mr. Scofield: August 27th. [1233]

* * *

Mr. L. E. Lyon: Memorandum of August 27th

(Testimony of Jesse E. Hall, Sr.)

of the meeting of August 22nd, your Honor, and that is where the discrepancy resides. Ours refers to the date of the meeting and his refers to the date of the making of the memorandum.

The Court: Is it stipulated that the meeting was held on August 22, 1946?

Mr. L. E. Lyon: August 22nd, 23rd and contact I believe on the following Monday—I believe August 22nd was on a Thursday and the last contact with reference to that meeting was on the following Monday.

The Court: Is it so stipulated, Mr. Scofield?

Mr. Scofield: Yes, sir.

Q. Up to the date of this memorandum Plaintiff's Exhibit 171, had Wright or B and W made any charge against any of your applications, that they were barred by any public use?

A. They had not. [1234]

* * *

Mr. Scofield: All right. Let me have the Exhibit 72.

Q. I show you, Mr. Hall, Exhibit No. 72, which has been heretofore offered in evidence. When did you first learn of the sale of that scratcher to the trade?

Mr. L. E. Lyon: What is Exhibit 72?

A. In the early part of '50.

The Court: Is that the so-called Nu-Coil scratcher?

The Witness: Yes, sir.

Mr. Scofield: That is the Nu-Coil scratcher.

(Testimony of Jesse E. Hall, Sr.)

The Court: When did you first learn of it?

The Witness: In the early part of '50; 1950.

Q. (By Mr. Scofield): Where did you first learn of that scratcher being sold to the trade?

* * *

A. The first event that I can place now—and there were several things that happened right along at the same time—is that we bought one at Lake Charles, purchased by Mr. Scofield. There was one purchased by us, by Mr. Scofield at Lake Charles, Louisiana.

Q. (By Mr. Scofield): To your knowledge, was that sold to the trade after January, 1950, regularly? Did you run across it?

A. Yes, sir. [1250]

Mr. Scofield: Can it be stipulated that it was offered to the trade?

Mr. L. E. Lyon: It is stipulated that they were offered to the trade the first time in the fall of 1949.

The Court: And they have been sold continuously since?

Mr. L. E. Lyon: And have been sold continuously since that date.

Is the stipulation accepted?

Mr. Scofield: Yes.

Q. I show you an application that has been marked here for identification as Plaintiff's Exhibit No. 69. Will you please identify that application?

* * *

Q. Then I will ask the witness if that applica-

(Testimony of Jesse E. Hall, Sr.)

tion of his was ever in interference with an application of Kenneth Wright.

Mr. L. E. Lyon: The application itself is the best evidence. I believe it shows, if the file is complete; if it is not, the complete file is the best [1251] evidence.

The Court: What application of Wright is alleged to have been in interference?

Mr. L. E. Lyon: I will stipulate that it was in interference with Wright Application No. 777,640, and the interference number was 84,411. [1252]

* * *

Mr. Scofield: Can it be stipulated, Mr. Lyon, that Mr. Wright had knowledge of Defendants' Exhibit A in September, 1947?

Mr. L. E. Lyon: I don't know right now. In connection with what event?

Mr. Scofield: All I want to know is whether or not it will be stipulated.

The Court: Defendants' Exhibit A for identification appears to be an advertisement of plaintiff appearing in Oil Weekly of July 7, 1941.

Was there a question whether or not a stipulation can be made that the defendant Wright had knowledge of it as late as——

Mr. Scofield: September, 1947. [1256]

The Court: ——or at least as early as September——

Mr. Scofield: September 8, 1947.

The Court: ——as September 8, 1947?

Mr. L. E. Lyon: I don't know. Perhaps if they

(Testimony of Jesse E. Hall, Sr.)

could tell us something connected, we might be able to tell. I don't know when Mr. Wright first obtained knowledge of it, and neither does he.

The Court: It appeared in the Oil Weekly apparently July 7, 1941. The quesetion is, can it be stipulated whether he had knowledge of the contents of it or had seen it at least as early as September, 1947?

Mr. L. E. Lyon: Mr. Wright informs me that the first information he had, that is, that he knew of that, he knew of that shortly after the magazine issued on July 7, 1941.

The Court: The understanding of the stipulation is that the defendant Wright had knowledge of the advertisement which is Defendants' Exhibit A for identification shortly after its publication and at all events prior to September 8, 1947.

Mr. Scofield: I accept the stipulation.

Can it also be stipulated, counsel, that Mr. Wright knew of the Hall application, Defendants' Exhibit K, which is No. 627,013, as early as September 8, 1947?

Mr. L. E. Lyon: September what?

Mr. Scofield: September 8, 1947. [1257]

Mr. L. E. Lyon: That Mr. Wright learned of the Application Serial No. 388,891, which forms a part of Exhibit K, shortly after the declaration of the interference and approval of the preliminary statements in the Interference No. 81,240, I believe, the papers of which interference, the file of which is in evidence as Exhibit No. 6, which interference was

(Testimony of Jesse E. Hall, Sr.)

declared on the date which that certified copy will show.

The Court: The question now, as I understand, is whether it may be stipulated that the defendant Wright had knowledge of the contents of that Hall Application No. 627,013, filed November 6, 1945, which is Defendants' Exhibit K for identification, at least as early as September 7, 1947?

* * *

Mr. L. E. Lyon: Pardon me. There was an error. I made an error there. I referred to the wrong application.

We will stipulate that Mr. Wright learned of an application No. 627,013 as of August 22, 1946, at the conference between Scofield, Wright, and Barkis in the California Club, starting on that day.

The Court: Do you accept the stipulation, Mr. Scofield?

Mr. Scofield: I accept the stipulation. [1258]

* * *

The Court: The question is now, whether you may stipulate that the defendant Wright had knowledge of the contents of the Hall application No. 627,013 as early as September 7th of 1947.

* * *

The Court: As to that portion of Exhibit K which contains the Hall application No. 627,013 as filed November 6, 1945, may it be stipulated that, as early as September 7, 1947, the defendant Wright had knowledge of the application as filed on [1259] November 6, 1945?

(Testimony of Jesse E. Hall, Sr.)

Mr. L. E. Lyon: Yes, yes.

The Court: Do you accept the stipulation?

Mr. Scofield: I accept the stipulation.

* * *

Mr. L. E. Lyon: O.k.

I am willing to stipulate that Mr. Wright and Mr. Decker, the general attorney at that time who was employed then by Mr. Wright, called upon the Gulf Research and Development [1260] Company on September 7th and 8th, 1947, in Pittsburgh.

The Court: Do you accept the stipulation, Mr. Scofield?

Mr. Scofield: I accept the stipulation. [1261]

* * *

Q. Mr. Hall, up to the time that suit was filed here in this case on December 10, 1947, had the defendant B & W or Wright ever charged any of your applications with fraud? A. Absolutely not.

Mr. Scofield: I offer at this time, your Honor, a copy of the monthly report of the Research & Development Department of the Union Oil Company which has been marked for identification as Exhibit 174.

* * *

The Court: It is the Jones & Berdine Report, isn't it? [1262]

* * *

The Court: Is it stipulated to be a genuine document and in all respects what it purports to be?

Mr. L. E. Lyon: Stipulated to be a document

(Testimony of Jesse E. Hall, Sr.)

received by the Union Oil Company as of February 14, 1940.

The Court: Do you accept that stipulation?

Mr. Scofield: I will accept that stipulation.

The Court: Received in evidence as Exhibit 174.

* * *

Q. (By Mr. Scofield): Up to the time, Mr. Hall, that the defendants brought the petition to strike, which is here now in evidence as Exhibit 133, had they ever charged any of your applications, either of the three applications 388,891, 627,013 or 55,619 with fraud? [1263]

* * *

The Court: When do you contend the first time fraud has been charged?

Mr. Scofield: That is the first time we ever heard of fraud, was on April 11, 1951.

The Court: Well, why don't you ask the witness if he had ever heard of it prior to that time. That will dispose of it, won't it?

Mr. Scofield: All right.

Q. Did you ever hear of fraud prior to April 11, 1951? A. I have not. [1264]

Q. Did you ever hear that there was a public use barring your application prior to December 14, 1951? A. I had not.

The Court: Is there a public use barring his application?

Mr. Scofield: There is a public use that has been pleaded or has been charged.

The Court: Then what you mean to say, I take

(Testimony of Jesse E. Hall, Sr.)

it, is whether he ever heard of the claim of public use?

Mr. Scofield: A claim of public use, that is right; a public use charged against his application.

The Court: Prior to what time?

Mr. Scofield: December 14, 1951.

The Court: Your answer? A. I had not.

Q. (By Mr. Scofield): Mr. Hall, in the injunction, Exhibit WW in evidence, which this court issued there is a letter requesting from customers a $2.50 royalty. Will you explain the circumstances of sending that letter?

The Court: What is the date of it?

Mr. Scofield: The date of the letter?

The Court: Yes.

Mr. Scofield: I will give you the date of it.

The Court: Isn't the letter otherwise here?

Mr. Scofield: The date of the letter is January 12, 1952. [1265]

The Court: Is there any copy of the letter here otherwise than in Exhibit WW?

Mr. Scofield: Up to now I don't believe that there is anything in the evidence.

The Court: Very well. You may answer.

A. A few months prior to that date it had been called to my attention the inscription on the invoices made by B & W to various different companies, that they were charging a royalty. A portion of the money they were collecting was for the royalty of a method to run their centralizers and

(Testimony of Jesse E. Hall, Sr.)

scratchers.

The Court: You mean charging their customers?

The Witness: They were charging their customers that royalty. They had taken one of the fellows that had been our salesman up at Nocona, a Weatherford Oil Tool salesman—I think he had worked for me—as their salesman. And I went up to see him and I found the boxes the scratchers were cased in, a square pasteboard on the back outlining the method of installing, the method of operation, the reciprocation for a cement job. And they said it was their patent number so and so. And then I had the fellow furnish me a copy of the inscription that went on, where they were charging a royalty for it. Knowing that their method didn't cover that, I went to Kansas City to see and discuss the matter. And upon that, we decided to send this royalty charge [1266] out to the various people that was so supposed to be paying them a royalty.

I might also state that the inscription on the cardboard on the box is similar to the ones in their various catalogues.

Mr. L. E. Lyon: Your Honor, I don't like to interpose an objection on a motion to strike, but I would think that in order to have the foundation laid for the testimony on this question, we should know as to the time and the place and the parties. He states "some person," without being named, or some place without naming it.

The Court: Did he name the salesman?

Mr. L. E. Lyon: He said someone that had

(Testimony of Jesse E. Hall, Sr.)

worked for him. I did not get the name.

The Court: What was his name?

The Witness: I don't recall his name but I can produce it very quickly.

The Court: Where did this conversation take place when you saw the label on the defendant's box?

The Witness: At Nocona, Texas, near the border of Texas and Oklahoma.

The Court: And where at that place?

The Witness: In the building.

The Court: In what building?

The Witness: In the building that he was occupying.

The Court: What was that building? [1267]

The Witness: Well, it was a building where he had quite a shop, a welding shop and a lot of B & W stuff stored there.

The Court: Who was he?

The Witness: This salesman that had been handling this stuff.

The Court: Was it your understanding that he was now a salesman for B & W?

The Witness: He was.

The Court: Did he have a place of business there?

The Witness: He did.

The Court: His own place of business or did it appear to be someone else's?

The Witness: It was his own place of business.

(Testimony of Jesse E. Hall, Sr.)

The Court: Does that identify it for you?

Mr. L. E. Lyon: No, your Honor, it certainly doesn't. He said the man had been his employee at some time, I understood, also.

The Court: He said he could furnish the name later.

Could you give us the time or the date?

The Witness: Just a month or something prior to this letter.

The Court: Would it be December of last year?

The Witness: Yes, along at that time. My son John is president, so he knows the man well.

The Court: Can't you suggest his name? [1268]

Mr. Scofield: I don't know his name, your Honor.

The Court: Ask Mr. John Hall, and then ask him a leading question about his name.

Mr. L. E. Lyon: Was it Mr. Franklin?

Mr. John Hall: That is correct.

* * *

Mr. L. E. Lyon: I think, your Honor, there was a slight error also in the record. I suggest the date would not have been last December but the December before that.

Mr. Scofield: 1952.

The Court: Very well. I led you into that error, Mr. Hall. I am sorry.

The Witness: It was just prior to sending these $2.50 royalty notices.

The Court: It was around a year ago now?

The Witness: Yes, sir.

The Court: A month or two before you sent out

(Testimony of Jesse E. Hall, Sr.)

this letter that was forwarded in the injunction Exhibit B & W?

The Witness: Yes, it could have been very close to that.

Q. (By Mr. Scofield): I put before you, Mr. Hall, patent [1269] 2,151,4——

The Court: Exhibit?

Q. (By Mr. Scofield): ——Exhibit 172 for identification, patent 2,151,416, and ask you whether or not——

The Court: The Black and Stroebel patent, is it?

Q. (By Mr. Scofield): The Black and Stroebel, and ask you whether suit was ever brought against any of your licensees on that patent?

A. There was.

Q. What difficulty arose, if any, with respect to this litigation? You might first state where the litigation was.

A. The litigation was in Oklahoma City, Ft. Worth, and Houston, three places.

Q. And what did you do after those complaints were filed? [1270]

* * *

A. I recognized the Black and Stroebel patent as I had seen the copies of it many times before and it had been a reference in the scratcher applications before. So I came to California. I knew where Mr. Stroebel lived over here at Whittier, to see him, to see what in the world he was suing me about. I was trying to find out who Scratchers, Inc., was. And

(Testimony of Jesse E. Hall, Sr.)

after having had one of our men contact Mr. Stroebel, he notified me the night I got here that Mr. Kenneth A. Wright had bought the patents. You had informed me, or prior you had informed me you had made a search in the Patent Office to see who owned it and you found out that Mr. Kenneth A. Wright had filed the ownership of the patent.

Mr. Scofield: At this time, your Honor, I offer the title report that was made of the Black and Stroebel patent.

The Court: A certified copy of the Patent Office?

Mr. Scofield: A certified copy of the title report, Exhibit 173.

The Court: Is there objection?

Mr. L. E. Lyon: No objection.

The Court: Received in evidence. And do you offer Exhibit 172 for identification?

Mr. Scofield: I offer Exhibit 172, the Black & Stroebel patent. [1271]

The Court: Is there any objection?

Mr. L. E. Lyon: No objection.

The Court: Received in evidence.

(The documents referred to, and marked Plaintiff's Exhibits 172 and 173, were received in evidence.)

Q. (By Mr. Scofield): What then did you do, Mr. Hall, after receiving this information that Mr. Wright had purchased this Black and Stroebel patent from the patentee?

A. I called you and told you the information and to find out as much as I could about Scratchers,

(Testimony of Jesse E. Hall, Sr.)

Inc. And I found out they were a Nevada corporation and I proceeded to Nevada to find out who were the incorporaters of the Scratchers, Inc. I found out there that a man by the name of Wright who lived in Pasadena was one of the incorporaters. And I came back to Los Angeles, followed the thing down, and Mr. Wright would not give me any information whatsoever to the incorporation.

Q. Who was this Mr. Wright?

A. I understand he was an attorney in Pasadena, is all I know. I never knew him before.

Q. Did this litigation ever come up with any of your customers, that is, the litigation that Scratchers, Inc., had brought against you in Ft. Worth, in Houston, and in Oklahoma City?

A. It evidently was brought, yes, because everywhere [1272] we went they was asking about these people suing us about this old scratcher.

Q. Did you personally ever meet the opposition that this litigation caused?

A. Yes. I was asked about it by the Continental Oil Company. I was asked about it with the Gulf, discussed with the Gulf at Pittsburgh there might be a possibility of an infringement, but I couldn't see it. We discussed the possibility. And, as the matter didn't go so long—we at that time had felt that the suit was Kenneth Wright or B & W, and at that time I suggested to you to move to make them a third party to help defend the case, and that led to the dismissals that ended it.

(Testimony of Jesse E. Hall, Sr.)

Mr. Scofield: I offer at this time, your Honor, portions of my file of the pleadings. [1273]

* * *

The Court: That is, Exhibits 143, 144, and 145? [1274]

* * *

Q. Mr. Hall, what was the reason for organizing these Venezuelan companies?

Mr. L. E. Lyon: That is objected to as immaterial, your Honor.

Mr. Scofield: Referring to Hall Development.

The Court: Objection overruled.

Mr. Scofield: And the Weatherford Spring Company of Venezuela.

The Court: Objection overruled. He may answer.

A. In the latter part of 1946, I had developed the method of oil well cementing to the stage, to the trade, that I had so much more than I possibly could do in that respect, that I had more than I could do, and I had to reach out and find someone else to take care of various districts in the world where oil-well equipment was used, and I sought to acquire additional help, and through that there was the [1329] organization of the Weatherford Spring of Venezuela. And while working out the mechanics, it was found to be necessary, in order for the additional finances and one thing another, on account of the hazard down in Venezuela, to organize the Hall Development Company.

(Testimony of Jesse E. Hall, Sr.)

Q. (By Mr. Scofield): Did any of the customers in Venezuela require you to service this equipment?

* * *

A. (Continuing): Yes, sir. All the customers down there, as the line was absolutely new, and most all of the operators had new crews because it was at the end of the war, directly after, and most of the fellows were very new in the oil fields, and it required complete servicing of the equipment in the fields and it required a complete stocking down there, and it took some time, as high as five to six months, to get the material made. In other words, it was such an extended thing that I couldn't continue operation any longer as an individual.

Q. (By Mr. Scofield): How did you go about the organization of these companies?

A. I first figured that I would have to have an organization down there to stock the equipment in Venezuela, [1330] and later, after I was in Venezuela, I saw I was going to have to hire and find someone who could service the equipment in Venezuela. I found out that my agent at that time couldn't do the job, and I commenced looking forward for someone that could service equipment, that had experience.

Q. Who was your agent at that time?

A. A fellow by the name of Roland Smith.

Q. Is he a resident of Venezuela?

A. No, sir. He is a resident of California, of Los Angeles.

(Testimony of Jesse E. Hall, Sr.)

Q. Who is Mr. Jim Barry that you have referred to from time to time?

A. Mr. Jim Barry was at that time superintendent of the Shell Oil Company at Maracaibo and had been for many years.

Q. Had he ever worked for you?

A. Never had. I never knew him before. I was directed to him by one of the superintendents of the Gulf Oil Corporation.

Q. And did you get in touch with Mr. Barry?

A. I did.

Q. Who was associated with Mr. Barry at the time that these companies were formed?

A. Elmer D. Hall. Just prior to that, he was working for the Superior Oil Company, and after seeing that I was in [1331] need of someone, and he had been assistant superintendent and tool pusher for many years, I had Jesse, Jr., contact him to see if he would quit his job and come to Venezuela.

Q. Is Elmer D. Hall your son?

A. That is correct.

Q. Where was he working for the Superior Oil Company? A. In southern Louisiana.

Q. Did he go to Venezuela?

A. He immediately came to Venezuela after quitting his job.

Q. When was that?

A. That was in the spring of 1947.

Q. About when were these companies organized?

(Testimony of Jesse E. Hall, Sr.)

A. They were organized in the spring or in the middle part of the year 1947.

Q. Did you have anything to do with the organization of the Nevada Leaseholds Corporation?

A. I did.

Q. What was the reason for organizing that company?

A. The reason for organizing that company was that I have a large number of patents and I had some out on royalty, and I was wanting to do a lot of development work, I didn't want to subject any of the other companies, the ones in the other companies, to it, and I was seeking new individuals for the various, different companies, for the various, different [1332] items that I had in mind.

Q. When did you organize the Nevada Leaseholds Corporation?

A. Mr. Scofield, I believe it was in 1949, but I want to be corrected by the papers if they show differently. I am just giving this testimony to my best recollection. I recollect of organizing them, but I don't recollect the exact date.

Q. What was the reason for the organization of the Parker Industrial Products Company?

A. The reason for the organization of the Parker Industrial Products Company was that I had started to build a factory and possibly had it about half built and half the finances, and realized, and Mr. Barry and Elmer and Junior and John realized, that it would take a lot more money to finance the factory.

(Testimony of Jesse E. Hall, Sr.)

Q. About what date was that, that you were building the factory?

A. The factory was started in the latter part—or early part of 1947, and I believe it was just completed in recent years. And Mr. Barry, being so far away, said he didn't know how things might go with me, things developing, that he would rather, regarding the assets, that the Venezuelan company would have to put in part of the money, and so would all the other sources of the product, and that he wanted some collateral, he did not know what might happen to me, and I [1333] told him I was contemplating turning the plant over to John and Jess in the United States.

And he said, well, that would be a sales organization, and he would rather have the assets, if he had to loan money, come out of the Hall Development Company and Weatherford Spring Company; he would rather have it in a separate corporation. And that was discussed several times, and that was the way the plan was worked out, and I put in under that.

Q. To what size had the business grown by the middle of 1947? A. I don't understand you.

Q. Well, to what size? Was it a small organization selling a small volume of equipment?

A. Well, up till, oh, the first part of '47, I had a factory that was built in 1943, that was capable of turning out something like $35,000 to $40,000 worth of equipment a month.

And in 1947 the requirements of equipment had

(Testimony of Jesse E. Hall, Sr.)

risen possibly to $150,000 and we were working a little factory 24 hours a day and had so many men in it that it was one of those things, why, the new factory was started. In other words, the whole situation at that time was very much embarrassed with growing pains, with deliveries and what not, behind with everything.

Q. And were you operating as an individual at that time? [1334] A. I was.

Q. Up until when?

A. Up until the last part of 1948.

Q. How was your time taken up principally during this period prior to December of 1948, in the operation of this business in which you were doing business as an individual under the name of the Weatherford Spring Company?

A. Well, up till the first of 1947, I did most of the work, designing and everything, and a great part of the labor work in the factory myself, and selling and what not. My son John helped me.

In 1947, after the business began to grow, Jess, Jr., had returned from the war, and he not knowing too much about field operations, I put him in the office to help me. And my son John and I then tried to take care of everything, but we couldn't in our employment, expanding with new help, and this and that.

Q. Where was Elmer working at that time?

A. He was working at that time for the Superior Oil Company in southern Louisiana.

Q. At that time was George living?

(Testimony of Jesse E. Hall, Sr.)

A. George was living and George was working for the Superior Oil Company in California.

And Elmer came in, in the forepart of 1947, and sometime in 1947, I don't know the date, George quit the Superior, also, [1335] and came to work for us. [1336]

* * *

Q. (By Mr. Scofield): Prior to the time that you continued doing business as an individual how was the selling done?

A. The selling was principally done by myself and my son, John; I, principally. As this was a new method and caused considerable difference from change to be made from the conventional method, it required the seeing the heads of most all the oil companies, and I was busy going from one to the other. As quick as I would get the head of a new company to surrender to this new method, then I would have to go to field work. And I was just jumping from one company to another.

Then in 1947, when I was in Venezuela, the Gulf sent me a telegram or sent a telegram to me to return to the United States, that there was patent litigation troubles, and I returned. [1337]

* * *

Q. (By Mr. Scofield): In selling your equipment how did you go about submitting it to the companies?

A. I carried part of the equipment into the companies, a piece of equipment in to them, physical equipment, and showed it to them.

(Testimony of Jesse E. Hall, Sr.)

The Court: You carried a sample around, did you?

The Witness: A sample around and explained to them.

Q. (By Mr. Scofield): And who did you go to see? A. How was that?

Q. And who in these companies did you go to see; that is, identify some of the executives or the superintendents. Just who did you go to see in the companies to sell your equipment?

A. Well, in the Union Producing I went to see Mr. Quigles.

Q. Who is he?

A. He is either the manager or the president of the company. In the Gulf I went to see the field superintendents, one Mr. Clements, at Houston, was in charge. Then he sent me to Pittsburgh, at which I seen the G.R.&D.C.; that is the [1338] Gulf Research. I seen all the head faculties of that, and also the vice-presidents of the Gulf. I seen all of them.

Q. Did you talk to Amerada?

A. Well, I seen all of the officials, practically, with the Amerada, that is, the superintendents and men in charge.

Q. Where did you call upon the Amerada, at what office? A. Tulsa.

Q. At Tulsa. Where did you call on the Gulf, besides Pittsburgh and at Houston?

A. Los Angeles, Tulsa, Shreveport, Houston, Pittsburgh, Venezuela, Canada.

(Testimony of Jesse E. Hall, Sr.)

Q. Did you ever talk to the Standard Oil Company of California? A. Yes, I have.

Q. Who in that organization?

A. Well, Mr. Toussaint was one of the main men we would go to see. He was in charge of the operation at San Francisco.

Q. He was located in San Francisco?

A. Yes.

Q. And when did you talk to him?

A. Oh, I talked to him within the latter part of late '47 several times. I was up there a couple of times then in '48. I recall of going and seeing him.

Q. Did you talk to the Shell? [1339]

A. Yes, I talked with the Shell here in Los Angeles, Houston, Tulsa, and various places that they had field offices, and Louisiana, Lake Charles.

Q. What was the equipment that you were offering to these different companies?

A. I was offering equipment, scratchers and centralizers, drill pipe protectors, and what-not that we had at that time.

Q. What type of scratcher were you offering?

A. What we term as the reversible scratchers with the sidewise bristles.

Q. What type of centralizers?

A. Spiral centralizers.

Q. Did you meet any opposition in any of these companies in the sale of your equipment?

A. I have met opposition.

Q. Where?

A. I have met opposition with the Gulf. When I

(Testimony of Jesse E. Hall, Sr.)

was in Venezuela they sent me a notice to come to Pittsburgh, that they had patent trouble. I immediately came back to Pittsburgh—— [1340]

* * *

Q. (By Mr. Scofield): State when you talked to the Gulf and the occasion.

A. In the spring of '47.

Q. Who was present?

A. There was Mr. Westcott, Mr. Vollmer, Mr. Kennedy, Mr. Teplitz, and Dr. Foote who was a vice-president.

Q. Where was this?

A. This is Pittsburgh, at Harmarville.

Q. As to your meetings with the Shell where did they take place?

A. The Shell taken place in Los Angeles.

Q. Who did you talk to there?

A. I talked with the purchasing agent and also the superintendent. At this time I have forgot their names.

Q. About what date was that?

A. That was in '47.

Q. The Standard of California you have indicated Mr. Toussaint—anybody else?

A. Yes, I talked with the purchasing agent here in Los Angeles. His name is Mr. Tuttle.

Q. When was that? A. In '47. [1341]

Q. And when did you talk to Amerada at Tulsa?

A. That was in 1948.

Q. Who did you talk to there?

(Testimony of Jesse E. Hall, Sr.)

A. I forget the gentleman's name at this time.

Q. You have indicated that you talked to Mr. Quigles of the Union Producing Company. Where was that conversation?

A. At Shreveport, Louisiana.

Q. About when? A. That was in '48.

Q. Did you encounter any opposition from Mr. Quigles?

A. Yes. I encountered—he had told me that B & W had been in there and claimed that we were infringing the method patent, the method of cementing their wells.

Q. How much of your time did it take in going about in the sales procedure and satisfying of the companies with regard to your equipment?

A. Well, since 1947, the spring of '47, it has taken about all of my time, about all I could spare of my time.

Q. After December of 1948 did you continue to go about trying to satisfy the customers of these licensees?

* * *

A. I have continued from company to company and [1342] districts. Some of the companies I have had to go down to the districts; that we found that we could have better results starting at the districts and working up to the head offices.

Q. (By Mr. Scofield): Have you on any occasions been required to furnish counsel to explain these things to the different companies?

* * *

(Testimony of Jesse E. Hall, Sr.)

A. When this first started I consulted with you and I have consulted with other attorneys, Mr. Jack Schley at Houston; and I have asked them to go with me to the various oil companies until I had acquired part of the knowledge, enough that I could satisfy, enough that I was able to stay in business, that we were not infringing.

Q. (By Mr. Scofield): How has the delay in the issuance of your patent affected you with respect to the sale of your equipment?

Mr. L. E. Lyon: That is objected to as assuming a fact not in evidence, your Honor; and also, too indefinite and improbable to effect an answer. [1343]

* * *

A. The delay of this, affecting this type of equipment, if the patent would have issued I would have had, according to the claims we were allowed, I would have had monopoly on that type of the equipment that was being offered to the trade other than myself.

Q. (By Mr. Scofield): Who was offering that equipment? A. The B & W, Inc. [1344]

Q. In what form?

A. In a form of Nu-Coil and the form of Multiflex.

The Court: That is the Nu-Coil scratcher which is a physical exhibit here; what is that exhibit number?

Mr. Scofield: Yes. The exhibit number is Exhibit No. 72, your Honor.

The Court: Exhibit 72 is the Nu-Coil?

(Testimony of Jesse E. Hall, Sr.)

Mr. Scofield: Yes, sir.

The Court: The other one is?

Mr. Scofield: The Multiflex is Exhibit No. 57.

The Court: Are those the scratchers you referred to, Mr. Hall?

The Witness: Yes, sir. [1345]

* * *

Mr. Scofield: The Patent Office interference, which is in evidence as Exhibits 71-A and 71-B, the charges of fraud, which are in evidence as Exhibits 133 and 134, and the public-use proceeding, Exhibit 135, all took what period of time?

* * *

The Court: What do you mean by "took what period of time," that they took so much time in the Patent Office?

Mr. Scofield: Yes, sir.

The Court: Or covered what period of time?

Mr. Scofield: Covered what period of time.

The Witness: From 1949 till now.

Q. (By Mr. Scofield): What expense were you put to during that time in the prosecution of these matters? [1347]

* * *

A. I had to hire several different attorneys in the matter. I had to make many, many trips to Washington for investigating. I have had to make many trips to Kansas City. I have had to make quite a few trips out here. I have had to make many other investigations out in the fields of various things that have arisen on account of these actions.

(Testimony of Jesse E. Hall, Sr.)

Q. (By Mr. Scofield): You have charged in this case that this interference was a trumped-up proceeding. What is your basis for that?

A. The basis of the interference was that they had knowledge of the advertising long prior, before the interference, that it was a bar; they had knowledge of the structure of my applications in the 1944 contract when I dealt with them. In many places they had knowledge. And the public-use proceedings——

Mr. Scofield: Now, just a minute.

Q. On this, do I understand your answer to be that in instituting this public-use proceeding, they knew there was a bar against them when they started the proceeding? A. Yes.

The Court: Who is "they"?

Mr. Scofield: B & W [1348]

* * *

The Witness: When B & W started the public-use proceedings, they knew there was a bar, which they pleaded as against their interference, as early as the Jones & Berdine test, and surely of the Kelly use, which was in 1940. [1349]

Q. (By Mr. Scofield): Now, as to these charges that you have made of unfair competition based upon the fraud proceedings——

The Court: In the Patent Office?

Q. (By Mr. Scofield): ——why did you charge that those are trumped-up proceedings?

The Court: Fraud proceedings where?

Mr. Scofield: In the Patent Office.

(Testimony of Jesse E. Hall, Sr.)

A. Because they never brought the fraud proceedings until up in 1950 and they knew of these applications as early as 1946, and they never once mentioned them until after the claims was issued to me. [1350]

* * *

A. The basis of that was, the public use proceedings could be carried on against my application to prolong the issuance of it in the Patent Office.

Q. (By Mr. Scofield): When, to your knowledge, were these uses known to B & W?

* * *

Q. During the proceedings that we have had in California since the latter part of October, on one occasion Mr. Lyon charged that you had passed out $100 bills. Do you recall that accusation?

A. I do.

Q. Did you ever on any occasion give anybody any bribe?

* * *

Q. (By Mr. Scofield): Did you hear him make that charge A. I did.

Q. On any occasion, Mr. Hall, did you ever bribe anybody to give evidence or affidavits in any of these proceedings in the Patent Office or in this case? [1355] A. Absolutely not.

* * *

Q. (By Mr. Scofield): What were B & W offering during this time that you were prosecuting these proceedings in the Patent Office?

Mr. L. E. Lyon: That is objected to as already

(Testimony of Jesse E. Hall, Sr.)
asked and answered right before lunch. He said the Nu-Coil and Multiflex.

Mr. Scofield: That was with regard to the other proceedings, your Honor, not with regard to the Patent Office.

The Court: Well, do they stipulate that those two devices were being sold during that period by the B & W?

Mr. L. E. Lyon: Yes, your Honor, from 1949 to date. [1356]

* * *

Q. (By Mr. Scofield): Now, you have indicated that you offered to the trade a spiral centralizer. Was there a like device offered by B & W?

A. There were. [1357]

* * *

Cross-Examination

By Mr. L. E. Lyon:

Q. Mr. Hall, in the fall of 1939 were you engaged in any business of manufacturing and selling oil field equipment or tools on your own?

A. I don't know exactly what date I started the manufacturing on my own. It was in near about that time, or the beginning of '40 or the fall of '39.

Q. Can you answer the question as to whether or not in the year 1939 you were engaged in the business of manufacturing any type of equipment on your own for oil well use?

A. At the beginning of 1947 up until I started——

(Testimony of Jesse E. Hall, Sr.)

Q. I said "1939."

A. That is what I am trying to answer if you will let me answer it—I sold spiral centralizers of my own design through the W.K.M. Co. up to the time that I started manufacturing, with a lapse of a very short time, possibly a month or a month and a half.

Q. At the time that you went to the Jones & Berdine tests at Dominguez Hills were you yourself manufacturing or [1373] selling any equipment for oil well use?

A. When I first started to going there I were selling equipment through the W.K.M. Before the tests were over—they run on some bit—I then were building patterns to start the manufacture for the trade name of my son, the Houston Pipe Appliance Co.

Q. Now, will you please answer the question as to when you first went there, and not talk about some other time, Mr. Hall? When you first went to the Jones & Berdine tests were you manufacturing any type of equipment?

A. When I first went there, no.

Q. When did you first go to the Jones & Berdine tests?

A. Oh, it was long before they ever started making any tests we went down and talked to them. I went down there with the secretary of the Coast Oil Field Manufacturing to see what the requirements were.

Q. All right. Now, you said when you were not manufacturing anything?

(Testimony of Jesse E. Hall, Sr.)

A. I were selling them. I understood that to be your question.

Q. No, I said "manufacturing."

A. You said "manufacturing or selling."

Q. All right. Let us limit it to manufacturing. You were not manufacturing anything at that time?

A. Not at that time, as I recall. [1374]

Q. All right. Now, when was that with relation to when the experiments were started at Dominguez Hills?

A. That was prior to the starting of it.

Q. How much prior to the starting of it?

A. That I couldn't tell you, Mr. Lyon.

Q. Do you know when you were there at Dominguez Hills at any time?

A. Well, the only thing I know when I was there, I associated with what was going on there, and that is, I don't recall the actual day I was there or the time of day or nothing about it. It has been 14 years ago.

Q. Do you recall the month that you were there?

A. No, I do not.

Q. Do you recall a year that you were there?

A. I recall the year that I was there.

Q. All right. Now, what year was it?

A. 1939.

Q. Was it in the fall or winter or summer or spring?

A. Well, as it is of record and I have constantly looked the records up and read them, I checked certain times, I know when the tests were being made.

(Testimony of Jesse E. Hall, Sr.)

They were made in the fall, but I don't actually remember it as of that time. I have only refreshed my memory.

Q. How long before the end of the year 1939 was it?

A. Well, the tests were made somewheres along during [1375] the time of September.

Q. I mean that you were there?

A. Well, Mr. Lyon, I was there before they started to making the tests, before there was any preparation, when they were talking about it, when they were getting the requirements of what to build and what to do. I were there at two occasions that I know of during the time they were making the tests. That would be three times that I can specifically recall that I was there.

Q. But you can't recall the month and give a date, is that correct?

A. None of them, only from records.

Q. Have you any personal records or any memorandum of your own as to when you were there?

A. No. I have constantly kept up with Jones & Berdine and known—I have kept one of their reports that was made.

Q. You have testified in a Patent Office proceeding that you aided Mr. Jones or Mr. Berdine in the preparation of the report which was subsequently offered at the A.P.I. and is in evidence as one portion of Exhibit X; that is true, is it not?

A. I would have to see it and read my——

Mr. L. E. Lyon: Give us Exhibit X.

(Testimony of Jesse E. Hall, Sr.)

A. I recall of discussing my tool with them.

Q. Do you recall testifying in the Patent Office that [1376] you helped Mr. Jones and Mr. Berdine in the preparation of their report before it was given at the A.P.I. meeting?

A. I recall of telling them of what my tool would do.

Q. Just answer the question, please.

A. Well, yes, that would be helping in the report.

Q. How long, to your knowledge, was the Jones & Berdine report in preparation before the A.P.I. meeting which was held on March 19 of 1940?

A. To my actual knowledge?

Q. Yes.

A. I don't recall how long it was; some three or four months.

Q. I put before you the Jones & Berdine report, Exhibit X, and will ask you to look at Figure 26 of that report and will ask you if that is the scratcher which has the sidewise bent bristles that you referred to in your letter written to Mr. Inglish and which is in evidence as your exhibit?

The Court: Are you referring to the Inglish letter?

Mr. L. E. Lyon: Yes, your Honor.

The Court: 15——

Mr. Scofield: 152.

The Court: 162, is it?

Mr. Scofield: '52.

The Court: 152.

(Testimony of Jesse E. Hall, Sr.)

Mr. L. E. Lyon: 152, and I will ask that the witness [1377] be handed Exhibit 152.

Mr. Scofield: Now, I would like, your Honor, to have an understanding as to what this Exhibit X is that has been put before the witness. We have a couple of those Jones & Berdine reports. The first one that was offered was from the Oil Weekly article, and then I believe that this report was substituted; and, as I recall, this report is the report that was made to the Union Oil Company; is that correct?

Mr. L. E. Lyon: This is Exhibit X, which is the report, the original report, containing both the A.P.I. and the report made to the Union Oil Company.

The Court: Apparently Exhibit X is a copy of the original which is on file in the library of the Union Oil Company, is that correct?

Mr. L. E. Lyon: That is correct, your Honor.

The Court: With the footnotes. Exhibit Z is copy of a paper published in the Petroleum World, issue of June, 1940. Is that another copy of it?

Mr. L. E. Lyon: Exhibit X, your Honor, as you read at first, it is a copy of the original report, the original of which is in th library of the Union Oil Company.

The Court: Exhibit Z is a copy as carried in the Petroleum World, is that correct?

Mr. L. E. Lyon: Yes, your Honor.

The Court: In June of 1940. Then there is still another [1378] exhibit.

(Testimony of Jesse E. Hall, Sr.)

Mr. L. E. Lyon: The other exhibit is the one which was referred to on the examination of this witness in chief, which is the report as it was handed out at the A.P.I. meeting on March 19, 1940.

The Court: And that is Exhibit 152-F. Are you both agreed on those facts as stated by Mr. Lyon and by the court?

Let us start over again.

Mr. Scofield: Well, the only thing that I am yet doubtful about is the exhibit that is before the witness. There seems to be two papers there, one of which is the report of Jones & Berdine to the Union Oil Company, and then some other sort of a report, but I don't know what that contains. That is the two reports.

Mr. L. E. Lyon: You have had a copy of that for eight months.

The Court: Is there only one exhibit before the witness, Exhibit X?

Mr. L. E. Lyon: Yes, your Honor. There are two exhibits in front of the witness.

The Court: What are they?

Mr. L. E. Lyon: X and 152, that Inglish letter.

The Court: Now, what I wanted to get straight in the record was this: As I understand it, Exhibit X, which is in evidence, is the original Jones & Berdine report which, as I [1379] understand it, was made to the Union Oil Company, wasn't it?

Mr. Scofield: That is my understanding; yes, sir.

The Court: Are you agreed on that, Mr. Lyon?

Mr. L. E. Lyon: I might state what Exhibit X

(Testimony of Jesse E. Hall, Sr.)

contains, your Honor. I think it will clarify the matter.

Exhibit X is a bound report to the Union Oil Company. It contains, in the first page, a letter of transmittal to the different individuals and officers of Union Oil Company, dated March 15, 1940, when the report was sent out. [1380]

Now, the next nine pages is a report that was made by Jones and Berdine, of the Union Oil Company, which contains the recommendations, the pictures and the names of the tools which were utilized in the test, as well as the manufacturers' names.

Following those nine pages is a mimeographed report entitled "Oil Well Cementing. Factors Influencing Bond Between Cement and Formation, by P. H. Jones and D. Berdine," which is an exact copy of this Exhibit 152, as that mimeographed copy was.

The Court: 152-F.

Mr. Scofield: 152-F.

Mr. L. E. Lyon: 152-F, as that was handed out at the A. P. I. meeting.

The Court: Very well. And Exhibit C is the report as published in The Petroleum World in June, 1940?

Mr. Scofield: I understand that now.

The Court: Do you agree upon that?

Mr. Scofield: Yes, sir.

The nine-page report was of the tests to the Union Oil Company.

The Court: Very well. I trust that will clear it up in the record.

(Testimony of Jesse E. Hall, Sr.)

Now, I understand both sides stipulate to the facts as stated by Mr. Lyon and by the court. [1381]

Mr. L. E. Lyon: I so stipulate, yes.

Mr. Scofield: Yes, I so stipulate.

The Court: Very well.

Q. (By Mr. L. E. Lyon): Mr. Hall, you have before you Exhibit X and you have before you Exhibit 152, that is the letter which was written to R. L. Inglish, dated March 24, 1942, and which you have testified you wrote.

Now, on page 2 of that report, I read to you:

"Fig. 26 shows a type of scratcher with little heads on each of the tines. They originally made this job a little larger diameter than would go in the pipe. After bending and twisting them around with pliers trying to make it fit into the dummy well, because they could not reciprocate it if it was a larger diameter than the bore of the well, they finally succeeded in bending the wickers over sideways until they got it to a diameter that would make the scratcher free in the bore of the well."

Now, you saw this scratcher, Exhibit No. 26, at the Jones & Berdine tests in Dominguez Hill in 1939. did you? A. As I recall it, I saw it.

Q. And as it is defined and described by you in Exhibit 152, is that correct?

A. That is correct.

Q. And you saw it in the well at that [1382] time?

A. I didn't see it in the well, because this well was up on top of a bank and I never did go up on top of that bank.

(Testimony of Jesse E. Hall, Sr.)

Q. You saw it, with the wires being over sidewise. Who bent them over sidewise, Mr. Wright or Mr. Jones?

A. Well, I recall Mr. Wright fooling around with the wires. I don't know who bent the wires, so I don't recall.

Q. You don't recall. Who was there when you saw it?

A. When I was there, there was Berdine, Lacey, Oscar Gay, and a fellow by the name of Miner, and there were some of the wickets laid out.

Q. No; I just asked you who were there. Now, was Mr. Wright there?

A. Not when I saw him the last time.

Q. I asked you when you saw them being bent.

A. I don't recall whether I saw them being bent. I know that they were having trouble with them and we were waiting there for our tool to be run, and that helped the situation up, some of them did. I don't know whether it was that number or the other number that was being bent.

Q. Now, which is your testimony at the present time, Mr. Hall, that you were there and saw the wires being bent or that you were there afterwards and saw the bent wires?

A. Well, I recall of seeing the bent wires in the cement columns at this particular time, and I know——

Q. You don't recall seeing—— [1383]

Mr. Scofield: Let him finish his answer.

The Witness: Wait a minute. I recall of waiting

(Testimony of Jesse E. Hall, Sr.)

and waiting and waiting because they had a lot of trouble making this stuff work, and I recall waiting and waiting. It held the whole parade up, the whole thing. [1384]

Q. (By Mr. L. E. Lyon): Now, do you recall or do you not recall seeing anyone bending the wires on the Fig. 26 scratchers?

A. At this time I don't recall having seen anybody actually bending wires, but I realized or knew that such a thing was done or knew what was the matter and knew the story all the way through.

Q. And you knew, too, at that time, which was some time in 1939, was it? Is that correct?

A. Yes, it was in 1939.

Q. (Continuing): ——that the scratcher wires of Fig. 26 were bent sideways?

A. No, I didn't know that the whole thing was bent sideways. I knew the ends were bent around. They bent some of them in curves and some of them they bent over.

Q. Now, in your letter of Exhibit 152, on page 2, you state that the wickers were bent over sideways. Now, when did you first know that?

A. As to that data that I knew that they bent the ends of them over sideways, and at this point I want to recall they didn't bend them over sideways—they only bent the wire up in the wicker and bent it over and I think I tried to explain it.

Q. You mean, then, that just the outer ends of the wires were bent over sideways, is that what you are talking about? A. Yes, sir. [1385]

(Testimony of Jesse E. Hall, Sr.)

Q. You mean that the whole wicker, the whole wire, was not bent over sideways?

A. No, sir; it was not.

Q. Now, just to explain that, I place before you Exhibit Four I. I will ask you if that exhibit which is mounted upon a simulated casing, Exhibit CF, is a fair representation of Fig. 26 of Exhibit X?

A. Will you bring Exhibit X over here, please? I see some of the tines in this that is a fair exhibit and I see some that are not.

The Court: You are referring now to what?

The Witness: Four I.

Q. (By Mr. L. E. Lyon): Now, just refer to which ones you say are a fair representation of Fig. 26, point out to me the ones that you say are a fair representation.

The Court: You are referring to what?

Mr. L. E. Lyon: The wires.

The Court: The wires in the scratcher?

Mr. L. E. Lyon: The wires in the scratcher, Exhibit Four I.

The Witness: Well, I would say anyone that was as close as this one in here (indicating) is a fair representation.

Mr. L. E. Lyon: I am going to take the identification tag off and tie it onto that—well, now, I will tie another tag onto the one that you have pointed out. [1386]

The Court: Do you want to mark that H-1?

Mr. L. E. Lyon: I will ask you to mark that exhibit. Well, just sign your name, "Hall," on that tag.

The Witness: I want to call attention to——

(Testimony of Jesse E. Hall, Sr.)

Mr. L. E. Lyon: Just sign your name, please.

The Witness: Just a minute. I want to call attention to when it is pulled out in this position (indicating) that it is a fair replica and when it is pushed in, that it pushes it off, because these wires here are straight out until they are bent in the middle, in other words, the diffusion comes when they come off the orbit and come over here (indicating). This is the sidewise bristle. These are where the ends may have been.

Mr. L. E. Lyon: Just sign that one with your name, "Hall," on Exhibit Four I.

The Court: Are you to identify others?

Mr. L. E. Lyon: Probably.

The Court: Why not mark that H-1?

Mr. L. E. Lyon: H-1, then.

(Said tag was marked H-1.)

Mr. L. E. Lyon: H-1 on Exhibit Four I. Now, were there other tines on Exhibit Four I which also are a fair representation of the Jones and Berdine Fig. 26?

The Witness: I would say yes, they are fair.

Q. (By Mr. L. E. Lyon): Now, is there any on there that you would say are not a fair representation? If you will, [1387] will you mark those?

A. There are plenty of them both ways.

The Court: Use just one sample of each.

Mr. L. E. Lyon: I think that is enough, your Honor.

(Testimony of Jesse E. Hall, Sr.)

The Court: Supposing you mark the second one as H-2.

Mr. L. E. Lyon: Just mark the second one H-2. Here is my pen again.

(The witness marked said tag H-2.)

Mr. L. E. Lyon: All right.

Q. Now, what is the difference between H-1 and H-2?

A. The difference, the difference that I am trying to point out is that where the scratcher tine leaves the collar, the orbit that it leaves at, is more straight out in a radial position to where it is bent to a sidewise position, than the other one. The other one is beginning to take a sidewise position.

The Court: The other is what?

The Witness: H-2. H-2 is beginning to take a sidewise position as it leaves the collar itself.

Q. (By Mr. L. E. Lyon): Now, you have testified, Mr. Hall, that those scratcher wires were bent that way by hand at the well, isn't that correct, or at the test location?

A. They could have some of them been bent there. They could have went away and fixed some of them.

Q. Well, now, which were they? [1388]

A. I don't know, Mr. Lyon, because there were several of those exhibits in and I did not set any one of them out in difference. And I know there was a lot of fooling around done with the thing, and that is all I know.

Q. Did you personally make any minute exami-

(Testimony of Jesse E. Hall, Sr.)

nation to see that the tines of the scratcher that you saw, like Exhibit 26, didn't have the wires deviate with the slight difference as is true of the ones that you have marked Exhibits H-1 and H-2, Mr. Hall?

A. I did not. The only examination that I have made, to do that, is from the photograph itself, from the Jones and Berdine report.

Q. Then, it is not your position that the actual scratcher shown in Exhibit, in Fig. 26, and as used in the Jones and Berdine test didn't have the slight deviation of wire inclination that is true of the deviation that you have pointed out and marked H-1 and H-2 on Exhibit Four I, is that correct?

A. That is not correct. Taking or presuming that this is a true picture which is marked all the way from the—I have examined this picture many times.

Q. You mean, then, in your answer, that as far as Fig. 26, the photograph accompanying the Jones and Berdine report is concerned, it does not show the deviations which you have pointed out and marked H-1 and H-2 on Exhibit Four I, is [1389] that what you mean?

A. I mean that the Fig. 26 does not show the sidewise ones that were turned more sidewise than the ones that were turned straight out. The only ones I can take are the ones I am looking straight into and I can look straight down the wire and the only ones I can take, looking straight into here (indicating) are the ones closest to it, the ones that I accept.

(Testimony of Jesse E. Hall, Sr.)

Q. Your answer is, insofar as the actual scratcher used on the well at Dominguez Hill, the tines of the scratcher had the same deviations then as are true in Exhibit Four I that you have pointed out, together with the ones in Fig. 26 of Exhibit X, is that true?

Mr. Scofield: I object to that as argumentative, your Honor.

The Court: Objection overruled.

The Witness: That is true, and it is also the picture that you have questioned me on many, many times.

The Court: What is the picture?

Mr. L. E. Lyon: Fig. 26 of Exhibit X.

The Court: Is that the one you refer to?

The Witness: Yes, sir.

Q. (By Mr. L. E. Lyon): Now, Mr. Hall, look at Exhibit CF, which is a pipe on which Exhibit Four I is mounted, and tell me, is that a fair model or representation of the portion [1390] of casing that was used in the Jones and Berdine test with Exhibit Four I, if you know?

A. That is.

The only thing in this test here, Fig. 26, I would presume it was a long piece of pipe, this (indicating) being a short piece.

Q. That is the only difference that you can ascertain, is that correct?

A. Oh, I can ascertain a lot of little differences but in general it is the same thing.

Q. All right. Now, if you can ascertain some little differences, except that perhaps Exhibit CF

(Testimony of Jesse E. Hall, Sr.)
is made of aluminum while the casing I presume was of steel——

The Court: Don't let us go at it by process of elimination, Mr. Lyon.

Mr. L. E. Lyon: All right. Pardon me.

The Court: If you have something in mind——

Mr. L. E. Lyon: I have nothing in mind, your Honor.

The Court: Apparently the witness does not, either.

Q. (By Mr. L. E. Lyon): Do you have anything in mind, any slight differences?

A. Well, I would not want to and I don't know what I would be looking for. I said it is a good replica, the whole thing. If anybody was not involved in it, I would say it is a good replica all the way through. [1391]

The Court: Do you have any qualifications in mind?

The Witness: No, I do not, your Honor.

Mr. L. E. Lyon: Now, your Honor, I will offer in evidence Exhibits Four I and CF as identified by this witness and concerning which he has testified.

The Court: Is there any objection?

Mr. Scofield: If this, your Honor, is offered on the issue of unfair competition, I object to it as wholly immaterial.

If it is merely on the basis of credibility of this witness, I have no objection to it.

Mr. L. E. Lyon: It is offered as cross-examina-

(Testimony of Jesse E. Hall, Sr.)

tion of this witness and on the ground of unfair competition, both in defense to their claim and in prosecution of our claim, your Honor.

Mr. Scofield: I mean, I would like to know what applicability this particular exhibit has to any issue of unfair competition.

Mr. L. E. Lyon: I believe it will be self-evident.

Mr. Scofield: Well, I do not understand it. I object to it as wholly immaterial and irrelevant to any charge of unfair competition that these defendants have made.

The only charges of unfair competition, as far as I have been able to understand from their statement, is first the letter that was written asking the $2.50 royalty and the——

The Court: The plaintiffs here claim as one ground, for [1392] example, as I understand it, that unfair practices occurred in unjustifiably opposing the Hall application to the Patent Office, of the Hall application.

Mr. Scofield: That is correct.

The Court: Of course, that is a very broad issue. If Hall is not the inventor and was about to get a monopoly, if it is a matter of public domain, then the person opposing that monopoly would render a public service, would he not?

Mr. Scofield: We have already, your Honor, put in such documents as have to do with that in this case, in the form of the proceedings in the public use proceedings. Now, there isn't anything added by this replica here over what is already in the Jones and Berdine report.

(Testimony of Jesse E. Hall, Sr.)

The Court: Yes, but this is part of the history of the art, I take it?

Mr. Scofield: No.

The Court: Is that the purpose that you offer it for, Mr. Lyon?

Mr. L. E. Lyon: The purpose I offer it for is one element of our claim of fraud, of fraudulent representation to the Patent Office in endeavoring to get a claim from the Patent Office on fraudulent representations and then assert those claims against us in the trade. That is one element, your Honor.

Mr. Scofield: That isn't here, your [1393] Honor.

The Court: Objection overruled. Exhibit Four I for identification and CF for identification are received in evidence.

(The exhibits referred to were received in evidence and marked Defendants' Exhibits Four I and CF.) [1394]

Q. (By Mr. L. E. Lyon): Mr. Hall, in your discussion with Mr. Jones and Berdine of the report that they were going to render of their experimental tests, you learned, did you not, that they were going to recommend the use of a Cosco guide?

A. No. I did not learn that they were going to recommend it. We went to them—I went to them and talked to them and requested it.

Q. All right. Now, when was that?

A. Well, that was some time prior, before the test was made.

Q. Now, you knew before the A. P. I. meeting

(Testimony of Jesse E. Hall, Sr.)

that they were recommending the use of the Cosco guide, didn't you?

A. Before the A. P. I. meeting?

Q. On March 19, 1940.

A. That who were, the Union Oil Company?

Q. Yes, that Jones and Berdine were recommending to their company that they use the Cosco guide.

A. No, I don't believe so. I don't believe that I ever knew that Jones and Berdine recommended it. I could have known it, but I don't recall.

Q. You don't even know now that they recommended it?

A. I know that I sold the Union Oil Company a lot of guides, and that is all I know.

Q. All right. Now, when after these tests [1395] were completed by the Union Oil Company at Dominguez Hill did you start to manufacture on your own behalf a spiral centralizer?

A. Do you want the month?

Q. Yes, I do. A. I can't give it to you.

Q. The year, then?

A. Well, it was so close to the winter months or the beginning of 1940—it could have been the last of 1939 and it could have been the first of 1940.

Q. It was immediately after the experimental tests at Dominguez Hill were completed, then, is that right?

A. No; I wouldn't say so. That had nothing to do with the making of this other centralizer.

Q. But you started in to make the same cen-

(Testimony of Jesse E. Hall, Sr.)

tralizer either in December, 1939, or January, 1940, is that correct?

A. Well, it was somewhat different. I had improved the centralizer before that time.

Q. Now, in what respect was it different, please?

Mr. Scofield: If your Honor please, I am going to object to all of this testimony that is now being given and certainly this last question, because it is entirely outside of the direct examination.

If we intend here to readjudicate and go over all of these questions that we have now before the Patent Office as to fraud and as to the legitimacy of these public use [1396] proceedings, I think we ought to know it so that we can prepare for it. I had no idea that we were here going to go over the public-use proceedings.

The Court: Well, haven't you tendered those issues?

Mr. L. E. Lyon: He certainly has tendered those issues.

The Court: I have forgotten the exact characterization. It was not a complimentary one. It was something about trumped-up charges.

Mr. L. E. Lyon: Yes.

Mr. Scofield: Yes. Merely to show the delay in the issuance of the Hall patent, not to show whether or not the particular public use was a legitimate public use. All he said was that it was a trumped-up charge and it delayed it over that period.

The Court: Mr. Scofield, I expected this kind of thing to come up, and I expect to hear a great

(Testimony of Jesse E. Hall, Sr.)

deal from both sides before this case is all over. I take it that before it is all over, you will all know, as I said before, all about each other's [1397] business.

The Court: You have had this witness testify under your questions under direct examination that certain things were trumped-up charges?

Mr. Scofield: Correct.

The Court: A makes an application to the Patent Office for a patent; his application, let us assume, is granted. If he were a public spirited citizen, he may go in there and raise some opposition to it, mind you, and the Supreme Court of the United States, if the patent should not issue, would say that he had rendered a public service because of the public interest in exposing these false claims of monopoly—correct?

Mr. Scofield: That is right.

The Court: Here is a competitor who comes in and does the same thing. How can you determine whether or not he did it unfairly unless you try out the merits of what was being done?

Mr. Scofield: They have been tried, you know, your Honor, in the Patent Office; that is, these exact issues are before the Patent Office at the present time and we are awaiting a decision.

The Court: Yes. But can this court rely upon the adjudication of the Patent Office as being res judicata between the parties?

Mr. Scofield: Well, I supposed it could.

The Court: I wish we could in many [1398] instances.

(Testimony of Jesse E. Hall, Sr.)

Mr. L. E. Lyon: Unfortunately the law is contrary, your Honor.

The Court: If you can show me any precedent that will permit me to leave these technical matters to the Patent Office, I would be delighted to do it.

Mr. Scofield: Then, am I to understand that we will hear——

The Court: We are going to hear whatever the issues lead us to hear, Mr. Scofield.

Mr. Scofield: That is all right.

The Court: And if you can find me some precedent which will permit me to limit that in the manner you suggest, it will be a pleasure.

Mr. Scofield: All right.

The Court: But you have tendered the issue here and, of course, the other side is entitled to meet it.

Mr. L. E. Lyon: Not only are we entitled to, your Honor, but the Supreme Court has laid an obligation on our hands to do it, and that obligation is clearly and equivocally stated by the Supreme Court of the United States in the patent case of Precision Instrument Co. v. Automotive Co., 324 U. S.

The Court: I suspect both of you will be citing that case before it is over.

Mr. Scofield: We do cite that. [1399]

Mr. L. E. Lyon: 806, and it leaves me, as I read it, no alternative. And that was an interference proceeding which went to the Supreme Court. The endeavor was to prosecute infringement against the party involved in the interference, based upon

(Testimony of Jesse E. Hall, Sr.)

fraudulently obtained patents, and the Supreme Court dismissed the action after it had been held that there was an infringement, thoroughly reprimanded the attorney for the plaintiff because he relied upon patents that he said he knew were tainted with fraud; and dismissed the whole action and held that the plaintiff in that case could not come into court with clean hands and prosecute its claim of infringement. And that is just exactly what we are endeavoring to avoid here at all expense.

The Court: You may proceed.

Mr. L. E. Lyon: I believe there was a question before the witness.

The Court: Do you have a pending question, Mr. Reporter?

(Pending question read as follows: "In what respect was it different?")

A. It was different in respect——

Mr. L. E. Lyon: We are talking about the centralizers now.

A. I understand. It was different in respect that the earlier centralizer had two slidable collars on the pipe, with limited movement, and I had developed some improvements [1400] into this to where the one collar was fixed, attached to the casing, and the other collar had a limited slidable movement.

Q. How did that compare with the centralizer which is shown in your patent No. 2,220,437 (237), I believe the number is? It is Plaintiff's Exhibit— what is that number?

(Testimony of Jesse E. Hall, Sr.)

The Witness: Give me the question. I believe I can answer it without it.

Mr. L. E. Lyon: It is '237 instead of '437, and the exhibit number is 151. Will you give me Exhibit 151, Mr. Clerk?

Q. I hand you Exhibit 151, Mr. Hall.

The Court: Do you understand the question?

The Witness: Yes, sir.

The Court: Will you answer it?

The Witness: Yes, sir. The Exhibit 151 is the one where I stated had two slidable collars with limited movement. The one centralizer that I started to making near about the beginning of 1940 only had one slidable collar.

Q. (By Mr. L. E. Lyon): Have you a patent on that second form of scratcher, Mr. Hall?

A. How is that?

Q. Have you a patent on that second form of the spiral centralizer? A. I do. [1401]

Q. What is the number of that patent?

A. The patent number is 2,258,052.

The Court: Is that in evidence here?

Mr. Scofield: No, sir.

Q. (By Mr. L. E. Lyon): I hand you a book of patents, the book being entitled: Art Cited in Hall v. Wright and B & W, C.A. 7839 and refer you to patent No. 2,258,052 issued October 7, 1941, and will ask you if that is the patent to which you refer, Mr. Hall?

A. That is the patent filed January 15, 1940, which issued in patent No. 2,258,052, which has one

(Testimony of Jesse E. Hall, Sr.)

slidable—limited slidable collar and the other one fixed to the pipe or secured to the pipe. [1402]

* * *

Q. (By Mr. L. E. Lyon): I hand you Exhibit BM for identification and will refer you again to Patent No. 2,258,052, which, in this particular exhibit, is a photostatic copy, and ask you if that is a copy that you referred to in your testimony with respect to the second form of spiral centralizer, Mr. Hall? A. It appears to be.

Q. And that is marked in this book Exhibit BM, with the notation "Petitioner's No. 5ZACF," is it not? A. That is correct.

Q. Does this patent No. 2,258,052 which you have thus identified correctly describe the manner of operation of a spiral centralizer when it is used in a well, Mr. Hall?

A. We tried to describe it correctly. If there is any mistake that was made, I will be glad to go through with it and show you how it works. We have run lots of them.

Q. You know of no misstatement in this patent No. 2,258,052 with respect to the operation of your spiral centralizer? A. At this time I do not.

Q. Now, is the same true of the Hall patent, Plaintiff's Exhibit 151, that that correctly describes the operation and [1405] use of that spiral centralizer in a well in its operation?

A. It correctly describes it on the pipe and what it does, yes.

(Testimony of Jesse E. Hall, Sr.)

The Court: That is Exhibit 151, patent No. 2,200,237 (220)?

Mr. L. E. Lyon: Yes, your Honor.

Q. Now, I hand you Exhibit BM——

Mr. Scofield: It is 2,220,000, your Honor, instead of 2,200,000.

Q. (By Mr. L. E. Lyon): ——I will ask you to look at that book and the patents contained therein and tell me if all of those patents were issued to you personally?

The Court: That places quite a burden on the witness. Do you have anything in mind that were not?

Mr. L. E. Lyon: No, your Honor, I have not.

Mr. Scofield: Any joint patents there?

Mr. L. E. Lyon: No, I don't even recall any joint ones.

The Court: Don't they show on the face of them?

Mr. L. E. Lyon: Yes, your Honor, they show on the face of them. All he has to do is look at the name of them. In fact, they are the same patents, Mr. Hall, which were offered in the Patent Office proceedings and which you there identified.

A. Every sheet that I noticed of the drawings I recognize as patents that I have developed, and every heading I recognize the heading of the patent of my name, and recognized the name of it and all. I did not check none of the reading for the [1406] accuracy, because I would have to compare it, but I recognize all of the patents in body as my own inventions.

(Testimony of Jesse E. Hall, Sr.)

Q. Then the answer to my question was "yes," these are the patents that were issued to you, subject to your limitations?

A. There could have been some sheets in there, but I don't think there were.

The Court: They all appeared to be?

The Witness: They all appeared to be, your Honor. [1407]

Mr. L. E. Lyon: I will offer in evidence at this time the book of patents heretofore marked as Exhibit BM for identification.

The Court: Any objection?

Mr. Scofield: No objection.

The Court: They may be received.

(The documents referred to were received in evidence and marked Defendants' Exhibit BM.)

Q. (By Mr. L. E. Lyon): Mr. Hall, Exhibit BM contains a list of quite a few patents that were issued to you, but it does not include all of the patents that have been issued to you, does it?

A. No, sir.

Q. In fact, you have had many, many patents issued to you?

A. Well, I don't like that word of boasting. I had several patents issued, but not many, many.

The Court: Can you give us an estimate?

The Witness: Oh, I have worked on some. I get mixed up a lot of times whether an application has matured into a patent or not, but I would say offhand I have worked on some 250 different items.

The Court: On which letters patent have issued?

(Testimony of Jesse E. Hall, Sr.)

The Witness: Patents have issued probably on over a hundred, just offhand. [1408]

Q. (By Mr. L. E. Lyon): Now, Mr. Hall, when did you have your first experience, I mean the year, in developing a structure and in obtaining letters patent on it?

A. Well, I can remember as long back, ever since I was a boy, the first thing I remember trying to get a patent on was an automatic match box.

Q. About how many years ago was that?

A. Well, I am coming 63 and that was about when I was 17 years old, so you can figure it out.

Q. And you have been practically continuously engaged since that first experience with the match box up to the present time endeavoring to develop and patent ideas or tools or developments before the United States Patent Office?

A. No. I never got far enough to—I got this first thing into application through Victor J. Evans and Company. Then I came on up to 1924. I manufactured and sold centralizers here in Long Beach in '25. And I made an application but I don't think it got filed because we found so much reference on it, and then it materialized to a firm here in Los Angeles, Hazard-Miller, I believe it was at that time.

Q. Then from about 1924 to the present date, you have had about 100 patents issued to you, is that your testimony?

A. Yes, and I would say in furthering others, it was many times. But as to the actual item itself, I would say much over a hundred. [1409]

(Testimony of Jesse E. Hall, Sr.)

Q. How many interference proceedings were you involved in during that period of time, and I mean by an interference proceeding priority contests before the United States Patent Office?

A. I understand an interference fairly well. Well, offhand, if I counted them and missed one, I would want it—as all of the interferences are of record, the record would be the best evidence, but I will try to give you that offhanded, the interferences that I have had.

The Court: Just tell us about how many.

Will that satisfy you?

Mr. L. E. Lyon: That is what I asked him, your Honor.

The Witness: I had one with the centralizers. I have had two with the scratchers. I believe that is all.

Q. (By Mr. L. E. Lyon): And that one with the centralizer preceded the ones with the scratchers, is that right?

A. Yes. That interference was declared, it seems to me, now, although I would have to look it up, around 1937.

Q. How many interference proceedings have you actually testified in, Mr. Hall, besides the interference proceedings in which your own inventions were involved? A. That I have testified in?

Q. Yes.

A. At this moment I don't recall testifying in any.

(Testimony of Jesse E. Hall, Sr.)

The Court: Other than those that you were yourself a [1410] party to?

A. Yes. I don't recall of having anything to do with those.

Q. (By Mr. L. E. Lyon): Don't you recall testifying in an interference involving jars?

A. If I testified in anything having to do with an interference——

Q. Having to do with jars.

A. Then I don't know. I never testified as to jars at all. I testified in a case that had a jar case in it, but I only testified that I rented a string of pipe to a concern. [1411]

Q. That was an interference proceeding, was it not?

A. I don't know, Mr. Lyon. It could have been one of anything.

Q. When was it, Mr. Hall, that you recall that you first advertised—or when was it with reference to the time that you first advertised that you were in the business of manufacturing centralizers, that you entered into the business of manufacturing centralizers on your own, do you recall?

Mr. Scofield: I object to that as indefinite. I do not understand that myself, your Honor.

The Court: Do you understand the question, Mr. Hall?

The Witness: The only thing I can't understand, he is trying to find out when I first advertised that I was in the manufacturing of centralizers myself. Is that the question?

Q. (By Mr. L. E. Lyon): I said, when was it

(Testimony of Jesse E. Hall, Sr.)

with reference to that first ad that you entered into the business? I am still trying to fix the time.

A. Well, it was prior to my ad that was made, but I can't tell you when the ads were made, unless they could be produced themselves. I might recognize them.

Q. While they are looking for that advertisement, I will ask you, at the time that you entered into the manufacture of the spiral centralizer on your own behalf, if you had an agreement with the Cosco Manufacturing Company.

A. At the time I had an agreement with the Cosco [1412] Manufacturing Company, in the early part or the middle of the year, they closed up here in Los Angeles and they had a divorce in their company. The vice-president was a fellow by the name of Pat Smith, and Joe Horastus was the president of the company, and Lacy Sears was the secretary and treasurer, and they had a matter that happened between them so that they closed the doors, and at the time that they closed their doors, I started getting ready to manufacture centralizers because of the fact that I could not let the trade go on wanting them. They were calling for me, and I had them make arrangements with Mr. Smith to cancel the contract. And then later on, some time during the year or a couple or three months later, Mr. Sears came forth and canceled the contract but he protested to continuing to manufacture them.

Q. Now, you say that was in the middle of the year, in the middle of what year, Mr. Hall?

(Testimony of Jesse E. Hall, Sr.)

A. I place it at this time as the cancellation of the contract, which came from Mr. Sears after my attorney, Mr. Samuel Robinson, had written him several letters, came through with a cancellation, and the cancellation of that contract would be the best evidence to me of when the matter took place, but I am only telling you the sequence in which it took place.

Q. You said in the middle of the year. In the middle [1413] of what year?

A. As I recall it, it was in the middle of the year 1939. As I recall, the last time I had anything to do with Cosco is when I went out to the Jones and Berdine test.

Q. And this cancellation took place after the Jones and Berdine tests on Dominguez Hill in the fall of 1939 or in the fall of '39 and the winter of 1939-1940, is that correct?

A. Well, it could have taken place before and it could have taken place after, Mr. Lyon.

Q. Did you publish an advertisement in a trade journal announcing the cancellation of the contract?

A. That I don't recall.

Q. I hand you page 93 of the April 18th issue of the Oil and Gas Journal—— [1414]

* * *

FRED DRURY

called as a witness on behalf of plaintiff and plaintiff-interveners, being first duly sworn, was examined and testified as follows:

The Clerk: Please state your name.

The Witness: Fred Drury.

Direct Examination

By Mr. Scofield:

Q. Where do you reside, Mr. Drury?

A. Edmonton, Alberta, Canada.

Q. How are you employed at the present time?

A. Sales manager for Weatherford, Ltd.

Q. How long have you been employed by Weatherford, Ltd.?

A. Approximately three years in working out of the plant in Edmonton; directly employed by them for the last four months, three or four months.

Q. About what date did you take employment with Weatherford, Ltd.?

A. Just after the sales clinic up there. I don't recollect the date exactly.

Q. What year was it in?

A. This year. [1423]

Q. You were employed—my question was: When did you take employment for the first time with Weatherford, Ltd.?

A. May 20th, thereabouts, 1951.

Q. How were you employed prior to the time that you went with Weatherford, Ltd.?

A. Prior to '51?

(Testimony of Fred Drury.)

Q. Yes.

A. Halliburton Oil Well Cementing and Imperial Oil.

Q. What has been your experience in the oil fields? A. Working on the rigs, wildcatting.

Q. Over what period of time?

A. Oh, 19—I don't exactly remember—'48 or '49. I started in 1948 or 1949.

Q. And what did you start doing in 1948 or 1949?

A. I was working in Imperial Oil, roustabout in the yards.

Q. How long did you continue with the Imperial Oil Company? A. To the spring of '51.

Q. And during that time, besides being a roustabout—and you might state what a roustabout does with a company?

A. Well, it involves quite a few things—handling of casing, oil well equipment, any one of a number of jobs.

Q. Is the handling of casing on the rigs or just in the yard? [1424]

A. It could be both places.

Q. What did you actually do with the Imperial? Did you handle the casing on the rig or did you just have work in the yards of the Imperial Oil Company?

A. On some occasions it would be on the rigs, some occasions in the yard when I first [1425] started.

Q. In what fields did you work in Canada?

(Testimony of Fred Drury.)

A. I only worked in one field. All the rest of my time was spent in the far North wildcatting in the bush country.

Q. In what field did you work?

A. LeDuc field.

Q. Where was that field?

A. That is directly southwest of Edmonton, 20, 22 miles.

Q. Was all of your time spent with the Imperial Oil Company as a roustabout? A. No.

Q. What else did you do? A. Motorman.

Q. Well, what are the duties of a motorman?

A. Well, you are roughnecking and also in charge of motors.

Q. What were the duties of a roughneck?

A. That is quite varied, too. That is handling of drill pipe, mud, making trips, a number of things, in roughnecking.

Q. Is that working on the rig during the drilling operation? A. That is right.

Q. After you left the Imperial Oil Company, with whom did you go and what were your duties?

A. I went with Halliburton Well Cementing of Canada [1426] and operated a cement truck, cementing oil wells.

Q. And how long were you with the Halliburton Company?

A. Only a period of about 20 days, somewhere thereabouts.

Q. After you left Halliburton, what was your next job, was your next job with the Weatherford,

(Testimony of Fred Drury.)

Ltd.? A. That is right.

Q. And what were your duties with that concern? A. When I went with them?

Q. Well, can you state, first, when you went with them?

A. I started with sales and service and now I have worked up to sales manager with Weatherford, Ltd.

Q. Now, what do the sales and service duties include?

A. Selling and servicing of our products to the extent of putting them on the casing properly and running them in the hole, obtaining a good cement job.

Q. Does it require you to go out on the rigs?

A. Yes.

Q. How many employees has the Weatherford, Ltd., at the present time, in Canada?

A. There are four of us at the present time.

Q. And who are the four people that are employed there?

A. Mr. Martin, Miss Lee, Mr. McPherson, and myself.

Q. Is Miss Lee in the office? [1427]

A. That is right.

Q. What does Mr. Martin do?

A. Mr. Martin is general manager. He performs sales and looks after office policy.

Q. And what does the third gentleman do in the company?

A. Mr. McPherson is our sales and field man,

(Testimony of Fred Drury.)

similar to the position I had prior to my present job, sales and service.

Q. In connection with your work with the company, have you had work with the sales records?

A. Will you repeat that, Mr. Scofield?

Q. I say, in connection with the work with the company, have you had any work with the sales records of the company? A. Yes.

Q. In what respect?

A. Well, having to go through them from time to time and check credit notations or entries pertaining to work if other people are away from the office.

Q. Who keeps the sales records there at the company?

A. At the present time, Miss Lee and Mr. Martin.

Q. Do the salesmen and the servicemen have anything to do with these records at all?

A. Well, like I said, I, myself, check back through them occasionally for credit references, invoices, delivery tickets. We make out all of our delivery tickets due to sales. [1428]

Q. How are the sales of the company recorded in the records of the company?

A. They are recorded in the sales journal according to invoice number, with a reference to the delivery ticket number, and they are itemized across the sales journal into their different categories according to the items we sell.

Q. Were you instructed to bring these sales records to Los Angeles? A. Yes, sir.

(Testimony of Fred Drury.)

Q. When was that?

A. About in the evening of November 10th.

Q. What did you bring with you?

A. I brought the sales invoices, the delivery tickets, and the sales journal of the company.

Q. Why did you bring the sales invoices?

A. Well, as I understood it, they wanted to check on Canadian Gulf Oil, and that would be the only way of checking back to get their name entered on an invoice. Most of these invoices—at least the sales journal would only show the supply stores through which the material had been processed.

Q. Describe briefly the procedure in selling the scratchers or centralizers, how the company bills them or puts them in their books and/or their invoices, sales tickets, when they make a sale, and you can take as an example a sale to the Gulf Company. What I want is the procedure. [1429]

A. Well, we get the order to deliver the material. We would make out a delivery ticket which is numbered, and that would show on the top of the delivery ticket, "Ship to"—which will state the supply store through which the material is going to be billed; and then "Shipped for"—and it would be "Canadian Gulf Oil" plus the rig number in most cases.

Q. Does the company that purchases the equipment issue a purchase order?

A. That is right.

Q. Then what do you do with the purchase order when it comes to Weatherford, Ltd.?

(Testimony of Fred Drury.)

A. We do not necessarily get a purchase order in Canada for that material. We will be notified by the Canadian Gulf Oil and we will contact the supply store which they designate and we will get the number from them. In most cases we never see the Canadian Gulf purchase order number.

Q. How are you informed that they want this equipment?

A. They will phone us or we will keep in contact with them.

Q. Then what is issued by the company as soon as they are advised as to which equipment is needed?

The Court: What company?

Mr. Scofield: Canadian Gulf.

A. The Canadian Gulf would issue either a requisition or purchase order to the supply store, depending on how they [1430] operate their purchasing department.

The Court: In other words, the user of the equipment does not buy directly from your company, they buy through some oil well supply house?

The Witness: That is right.

The Court: But you make delivery on the order of the supply house direct to the rig?

The Witness: That is right.

The Court: And the supply house does not have to handle it at all?

The Witness: No. In most cases they never see the equipment at all.

Q. (By Mr. Scofield): What sort of a paper is issued by the Weatherford, Ltd.?

(Testimony of Fred Drury.)

A. To the supply store?

Q. Yes.

A. They would get a copy of the invoice and also a copy of the delivery ticket which in most cases is signed by someone on the rig that the ticket is delivered to.

Q. Describe, if you will, the use of these delivery tickets, that is, how they are issued and to whom they are delivered, just how they get into the possession of the company.

A. Well, the delivery tickets show the material delivered, the amount, the kind, the supply store's purchase [1431] order from us, and the signature of the person receiving it on the rig, to show delivery was made, if we can obtain a signature. That is not always possible.

Q. Does the delivery ticket indicate the customer to whom the equipment is furnished?

A. Yes, in most cases.

Q. Does the invoice indicate the customer to whom the equipment is furnished?

A. That is right.

The Court: By "the customer," whom do you mean?

The Witness: The oil company.

Q. (By Mr. Scofield): By "the customer," I mean the Canadian Gulf in this case.

A. The invoice will state the supply store and the oil company receiving the goods, and possibly the well number it was delivered to, also.

(Testimony of Fred Drury.)

Q. Now, what appears in the journal?

A. The journal will show the date in the first column, the supply store, the delivery ticket number or the invoice number first, delivery ticket number, and then it is broken down into the various items that were quoted on the delivery ticket, such as scratchers, centralizers, drill pipe wipers. They are itemized through the various columns.

The Court: And the prices?

The Witness: And the prices, that is [1432] right.

Q. (By Mr. Scofield): And did you bring with you these documents and these journals?

A. Yes.

Q. When you got to Los Angeles, what did you do with respect to these sales journals and the invoices and the delivery tickets? [1433]

A. Well, I took all the invoices and started through them to check the Canadian Gulf Oil purchases from Weatherford, Ltd., from June 1950, through to date, at least to October 31st of this year. That was the only way I could get them, to get the name of the oil company buying these, by going through each of the invoices for that period of time.

Q. After you had gone through these invoices did you prepare any sort of a list?

A. Yes, I ran a list of the numbers of all invoices I found, then a summary sheet together with that.

Q. There has been marked for identification Ex-

(Testimony of Fred Drury.)

hibit 175. I put before you Exhibit 175 and ask you if you can identify or state what it is?

A. This is a photographic copy of the summary that I made up of the Weatherford, Ltd., books.

Q. What part of this exhibit is the summary?

A. The first page. The following is the itemized account of each invoice that I picked out of the invoice lists.

Q. Whose figures are these on the exhibit?

A. Mine.

Q. Did you prepare both the summary and the detailed list? A. Yes, sir.

Q. From what did you take the information that is contained on the detailed list which starts on page 2 and is [1434] numbered in the lower right-hand corner from 1 to 5, inclusive?

A. This information came out of the numbered invoices of the company.

Q. I notice on page 3, during the month of July and during the month of June there are some stars opposite some of the items. What do those stars designate?

A. Well, at about that time the Canadian Gulf Oil Company had rather a boom in the Stettler area of Alberta, and I was servicing the field myself and the supply stores were stocking the centralizers and I was there looking after the scratchers. I never had the room so that I kept them, and I used to go to them when I got the information from Gulf. I would pick up the centralizers from the supply store, take out my own scratchers, in-

(Testimony of Fred Drury.)

stall them on the rig and then run them in the hole. And there was no reference of that on those delivery tickets, no reference back through our books that they had gone to Gulf Oil, just my word that I had delivered them out. If you went in through the books, you would find rather large purchases by Jones & Laughlin Supply Company to pretty well substantiate those sales of centralizers at that time.

Q. Did all of these invoices from which you took the information included in this list have the name of the company to which the equipment was delivered? [1435] A. Yes, sir.

Q. Including these items that are starred here?

A. Yes, sir.

Q. How did you make up this summary sheet which is marked S-1 in the lower right-hand corner?

A. I took the totals of sales from each of the pages which are marked there, took the totals off pages 1 to 5, inclusive, and put them in their respective columns, and then ran a grand total on the bottom.

The Court: Any objection to the court examining this at this time?

Mr. L. E. Lyon: What is that, your Honor?

The Court: Exhibits 175-A and -B?

Mr. L. E. Lyon: No, your Honor. The court can look at them any time, any time.

Q. (By Mr. Scofield): I put before you two charts which have been marked Exhibits 175-A and

(Testimony of Fred Drury.)

175-B for identification. Can you identify the chart 175-A? A. Yes.

Q. Who prepared that? A. I did.

Q. What is shown on that chart, or what did you attempt to show?

A. Showing the sales taken from the sheets I prepared and ran them into graph form to show the business Weatherford, [1436] Ltd., had up until the point of August, '51, and the business that resumed in June, '53, on the centralizer chart, and the same thing on the scratcher chart the same as on the centralizer chart.

Q. What is shown on that Exhibit 175-A, the sale of scratchers or centralizers?

A. Scratchers.

Q. And what is shown on the Exhibit 175-B?

A. Centralizers.

Q. Do these charts both cover the same period of time? A. Yes.

Q. Indicate, if you will, the relationship, if any, that the chart bears to the schedules, Exhibit 175.

A. Well, the charts show the dollar value of the summary sheets only in graph form, taken from there and run across onto this in graph form.

Q. On the scratcher chart, Exhibit 175-A, there appears a gap in the center of the chart. Over what period of time did that extend?

A. September, '51 to May, '53.

Q. Were you at Weatherford, Ltd., during that period? A. Yes, sir.

Q. In the chart, Exhibit 175-B, there is also a

(Testimony of Fred Drury.)

gap. Over what period of time does the gap in the centralizer chart cover? [1437]

A. Well, the September, '51, the only full gap is to May, '52. Those four low graph points there in the particular field, it still would go to July, '53, again as far as straight field work went.

Q. Can you explain the occurrence of those four sales or those four points there in the centralizer chart, where evidently centralizer sales were made to the Gulf Oil Corporation?

Mr. L. E. Lyon: That is objected to on the ground that the witness has not been qualified to answer the question.

A. Yes, sir.

Q. (By Mr. Scofield): Were you there during that period? A. Yes.

Q. Do you know anything about those particular sales on the chart? A. Yes, sir.

Q. Will you explain what they were?

Mr. L. E. Lyon: The same objection, your Honor, no foundation laid.

The Court: Which sales are you referring to?

The Witness: The ones starting with June, '52, sir.

The Court: According to Exhibit 175-B there was some business in June, 1952, some in August of 1952, some in October of 1952, and some in January, then March, 1953, with respect to centralizers, whereas apparently from Exhibit 175-A [1438] after August, 1951, there were no sales of scratchers until June of 1953.

What are you asking him about?

(Testimony of Fred Drury.)

Mr. Scofield: I was inquiring about the sale of centralizers, your Honor, that took place during the year 1952, and the first two sales in 1953, if he has any information or knows of the occurrence, or knows why those particular sales occurred at that particular time.

The Court: Do you have any personal knowledge of the specific sales?

The Witness: Yes, sir.

The Court: Did you make the sales yourself?

The Witness: I delivered the sales and ran a couple of them in the hole.

Q. (By Mr. Scofield): How does it happen that you made centralizer sales during that period and not scratcher sales?

Mr. L. E. Lyon: Objected to as immaterial, your Honor; and also on the ground there is no foundation laid.

The Court: Overruled. I will permit him to express the opinion. You may cross-examine him fully on it.

A. We just could not sell the Gulf scratchers at that time in through there. Do you want the centralizer sales?

The Court: You could sell them centralizers?

The Witness: We could in some cases, your Honor.

The Court: By "could" what do you mean, that they just [1439] would not buy them or you did not have them?

(Testimony of Fred Drury.)

The Witness: No, we had them available for sale. Just it is an inconvenience for any company to have purchases from two companies if they are stocking from one. They have to call up two different outfits to get the delivery.

The Court: In other words, Gulf refused to buy from you during that period?

The Witness: They just would not buy our equipment, that is all.

The Court: But they did buy your centralizers at certain times?

The Witness: That is a little different. That is Pincher Creek, sir, and we had always run their jobs. Those are possibly the largest jobs in the world where this equipment is run. And they used our equipment there to get the benefit of the spiral centralizer, I imagine, and also our cementing heads.

The Court: But they would not use your scratchers?

The Witness: No, sir.

The Court: Is it your testimony that all the sales that took place of the centralizers to Canadian Gulf Oil Company from the end of August, 1951, up to the beginning of June of 1953, were on this particular development—what do you call it, Pincher Creek?

The Witness: Pincher Creek, with the exception, I believe, [1440] of the August, '52, was a job, through a lot of perseverance, we sold to Pigeon Lake. The rest of them, we will find through the sales records, would be to Pincher Creek.

(Testimony of Fred Drury.)

The Court: What did the sale involve, the sale of the centralizers for a well, in dollars? What does it usually involve?

The Witness: For an individual centralizer?

The Court: Yes, such as this.

The Witness: On the case of Pincher Creek the total cost for putting scratchers and centralizers in the well from the first string to the last will run somewhere around $16,000.

The Court: Take this August, 1952, business——

The Witness: That happens to be in a different field.

The Court: ——depicted on Exhibit 175-B; was that just a single sale?

The Witness: That was just a single sale, as I remember, sir. I will have to check in here.

The Court: The amount of it was around $200, I take it?

The Witness: That is right.

The Court: What would that represent, a centralizer?

The Witness: That is right, centralizers.

The Court: One centralizer?

The Witness: No. That would be, I imagine, seven or eight. [1441]

The Court: Seven or eight. Now, these sales that are depicted on these graphs, do they include services or just material?

The Witness: Just material. [1442]

* * *

(Testimony of Fred Drury.)

Cross-Examination

By Mr. L. E. Lyon:

Q. Do these sales records which you have produced here show the business of Weatherford, Ltd., in Canada from all sources over the periods covered by this Exhibit 175-A and 175 and 175-B?

A. They show as indicated to Canadian Gulf Oil Company.

Q. Does it show sales to all sources?

A. No, sir.

Q. Do your records that you have here show sales to all sources?

A. As far as I know, yes.

Q. Do they show the total sales to supply companies? A. Yes, I believe they do.

Q. It is my understanding that you sell to supply companies only; is that correct? [1446]

A. That is right.

Q. Now, do supply companies sometimes sell and deliver direct to the oil companies?

A. Yes, they do.

Q. Have you got any indication on any of these Exhibits 175-A, 175-B or 175 of such direct sales with direct deliveries?

A. Do you mean direct sales by us, or direct by the supply company?

Q. By the supply company.

A. No. We have no way of following that through.

The Court: Do the supply companies stock this equipment?

(Testimony of Fred Drury.)

The Witness: Yes, sir.

The Court: In other words, they carry it on their shelves, so to speak?

The Witness: They carry it to stock in their stores.

The Court: If the Gulf wanted a scratcher from a supply house, without telling you anything about it, they can buy it?

The Witness: That is right.

Q. (By Mr. L. E. Lyon): Are you advised, Mr. Drury, of direct sales from Gulf Oil Company at Tulsa, Oklahoma for delivery to the Canadian Gulf?

A. Are we advised by our Tulsa office?

Q. Are you advised of such sales?

A. Not to my knowledge. [1447]

Q. Do you know of any such sales?

A. No, sir.

Q. Did you know of the sale that was made in August of 1953 to the Gulf Company at Tulsa, Oklahoma, for delivery to the Gulf Companies in Canada which included 2,000 scratchers at $6.25 apiece and 500 centralizers at $30 each, all for delivery to Canada?

A. That is indicated on this chart. [1448]

Q. That sale has been?

A. I believe it is indicated as just centralizers, was it, or centralizers and scratchers, in June, 1953? I believe that is one of them.

Q. Wasn't there another sale made in August, in August, 1953? A. That is right.

Q. That sale was made at Tulsa, Oklahoma?

A. It may have been. It was sold by us, though.

(Testimony of Fred Drury.)

Q. The sale was here in the United States, wasn't it? A. I couldn't say.

Q. You don't know where it was made?

A. I understand it was made from Calgary to Weatherford, Ltd.

Q. Was it made on open bid, do you know?

A. Not that I know of, no, sir.

Q. Was a special discount given?

A. That is right.

Q. A discount of 20 per cent, is that correct?

A. I couldn't tell you. It may have been.

Q. Was that a special discount over and above discount given on any similar sales, given to any other company? A. It may have been.

Q. Were there any particular conditions of that sale? A. In what way? [1449]

Q. As to delivery.

A. We delivered them to wherever they wanted them delivered.

Q. Does that particular sale provide that any of these 2,000 scratchers or any of the 500 centralizers they don't want, you will take back?

A. I couldn't say.

The Court: These scratchers are used in drilling, for instance, of a 5,000-foot well, in any particular number?

The Witness: It depends on the company, but if it was Gulf Oil it would run 25 or 30 to 40 scratchers to a well and six to possibly eight centralizers.

(Testimony of Fred Drury.)

The Court: And they are used up and they are not any good for any further use?

The Witness: That is right. They are cemented right in the well.

The Court: It depends upon the operator and how careful he wants to be, the conditions he encounters, and that sort of thing?

The Witness: Depending on the pay zone.

The Court: What would be the minimum to be used in a well?

The Witness: Some people get down as low as two or three centralizers and eight or nine scratchers, in some cases.

Q. (By Mr. L. E. Lyon): You say this sale was made at Edmonton, but you don't know the terms of it with respect to [1450] return of any of these scratchers or centralizers?

A. Not offhand, I don't know.

Q. Well, have you got any record of that sale?

A. There could still be possibly a record of it there in Edmonton.

Q. Have you any record of it here?

A. Not with any conditions stipulated that they can be returned.

Q. Do you know whether all of the scratchers or centralizers are delivered or they are to be delivered on order of the Gulf Oil Company at any time they desire?

A. Will you explain that again, Mr. Lyon?

Q. This particular order of 2,000 scratchers and 500 centralizers, were those delivered in bulk in that

(Testimony of Fred Drury.)

quantity to the Gulf Oil Company, or are they held for them by you, to be delivered at any time that they may direct?

A. They were delivered in batches.

Q. What do you mean? Do you mean that they have all been delivered in batches?

A. I believe that they have all been delivered now, yes. They are gone.

Q. And what do you mean by "in batches"?

A. They take delivery of whatever they could use, possibly a hundred centralizers and five hundred scratchers at a time. [1451]

Q. Were they delivered to different oil fields?

A. They were delivered to one oil field, Stettler, Big Valley.

Q. Where is that?

A. It is in the Stettler area. The group is comprised of three or four fields.

Q. What are the fields?

A. Drum Heller, Big Valley, Fenn, and Stettler.

The Court: Is that in Alberta?

The Witness: All in Alberta.

Q. (By Mr. L. E. Lyon): Would you say that the conditions of that sale did not provide that the Gulf could return any of this equipment at any time? A. I don't know, I am sure.

Mr. L. E. Lyon: May we have a stipulation to that effect, Mr. Scofield?

Mr. Scofield: No, I don't know that to be a fact.

Mr. L. E. Lyon: I will ask that the records of that sale be produced, Mr. Scofield.

(Testimony of Fred Drury.)

Mr. Scofield: Can the witness get down from the stand, your Honor?

The Court: Do you have them here?

The Witness: Yes, sir, they are in that room.

Q. (By Mr. L. E. Lyon): I mean the conditions of that sale. I do not mean the invoices. Do the invoices show the [1452] conditions of which I speak?

A. No, sir.

Q. Where are the records that do?

A. If there were any conditions, they would be at Edmonton, I imagine. That is our office.

Q. The only memorandum I have is a memorandum received from the Gulf office at Tulsa, Oklahoma, yesterday by telephone, by our agent there, which gave me those conditions. Now, have you any record of those conditions?

A. As far as the record is concerned, it will be in Edmonton. I am quite sure that it won't show on the invoice or on the sales journal.

Mr. Scofield: I am told that no such conditions exist, your Honor.

Mr. L. E. Lyon: I will ask that the record of that sale be produced.

The Court: What record do you wish, Mr. Lyon?

Mr. L. E. Lyon: The records that will show the conditions of the sale, conditions of delivery and conditions of return.

Mr. Scofield: If they are here, your Honor, they will be produced.

The Court: You can proceed to some other subject.

(Testimony of Fred Drury.)

Q. (By Mr. L. E. Lyon): Did you have anything to do, yourself, in negotiating that sale? [1453]

A. No, sir.

Q. Was that sale negotiated in Tulsa, to your knowledge?

A. Negotiated at Calgary, as far as I know.

Q. Did it come through the Tulsa office?

A. I think most sales of the Canadian Gulf Oil do go through the Tulsa office.

Q. All right. Now, are there other sales that have been made through the Tulsa office for shipment of material direct to the oil fields in Canada?

The Court: Whose Tulsa office?

Mr. L. E. Lyon: The Gulf Oil Company's Tulsa office.

A. Shipments, how do you mean direct, Mr. Lyon?

Q. (By Mr. L. E. Lyon): Shipped direct to the fields, which do not go through your hands.

A. Well, all of that equipment went through our hands.

Q. I am not asking about that. I am asking about other sales that are made to Gulf at Tulsa and go direct to the fields.

A. None of them go direct as far as the Canadian division is concerned.

Q. Well, are they made by the U. S. division?

A. Not to my knowledge.

Q. You have no knowledge of that?

A. No, sir.

Q. You wouldn't say that that wasn't [1454] true?

(Testimony of Fred Drury.)

A. As far as I am concerned, it isn't true.

Q. It is what? I did not get that answer.

A. All sales are made by us in Canada.

The Court: By that do you mean that all of the centralizers and scratchers which are used in Canada are sold through your concern in Canada?

The Witness: Yes, sir.

The Court: Is that it?

The Witness: Yes, sir.

Q. (By Mr. L. E. Lyon): What was the answer to his Honor?

A. "Yes, sir."

Mr. L. E. Lyon: I can't hear what the witness says.

The Court: Please keep your voice up, Mr. Drury.

Q. (By Mr. L. E. Lyon): On these shipments of these sales to your supply companies which Weatherford, Ltd., makes in Canada, have you a chart similar to the chart, Exhibit 175-A, and a chart similar to Exhibit 175-B, showing the total supply company sales over the period of time covered by these two charts, to supply companies of scratchers and centralizers? A. No, sir.

Q. It is a fact, is it not, as reported to me here, that such a chart would show the continuous increase in business by the Weatherford, Ltd., over this period of time covered by the charts, Exhibits 175-A and 175-B? [1455] A. It might.

Q. Well, does it or doesn't it?

A. It will show slumps, bad slumps.

(Testimony of Fred Drury.)

Q. It shows a continuous increase in that period of time, does it not, as an average?

A. I don't know. I have never run off the totals.

Q. You saw the totals that our accountant took from those books, didn't you? In fact they were returned to you, weren't they?

A. They were returned to Mr. Hall.

Q. They were returned to me. You did not see them at all? A. No, sir.

Q. Did you discuss that with Mr. Powers?

A. No, sir. I didn't discuss that with him.

Q. You did not discuss with him anything at all about it?

A. I didn't have any discussion with him about it.

Q. And you as sales manager do not know whether the sales which Weatherford, Ltd., has made over this period of time show a continuous increase or not, is that correct?

A. They might. I was not the sales manager at that time.

Q. All right. You say you have access to these books and you are sales manager now? [1456]

A. That is right.

Q. Don't you know what your record is compared with the people that were working at the company before that?

A. I have a fair knowledge of it.

Q. And you know that its sales throughout the period of time that you have been sales manager

(Testimony of Fred Drury.)

are on an increase over those which existed before, don't you?

Mr. Scofield: Sales to whom?

Mr. L. E. Lyon: To all companies, to any people that they sell to, supply companies.

A. Yes, I imagine they hold steady, slight increases.

Q. Now, you know that is true for both scratchers and centralizers, don't you?

A. I would have to check the books on that, Mr. Lyon.

Q. All right. I will ask you to do it. Have you the books here? Produce the sales ledger itself?

Will that show by months?

A. That will show the volume, yes.

Q. All right. Let us produce the sales journal, then.

The Court: Do you seek specific figures or just a trend of the business?

Mr. L. E. Lyon: I am seeking no specific figures, your Honor. It is just to show that there has been a continuous increase of sales of this equipment through supply companies by this company throughout this entire period of time. [1457]

Q. Will you check this sales journal and see if that is true?

The Court: Would your answer be any different if you were asked whether there was a continual increase instead of a continuous one?

The Witness: Well, your Honor, as of August—September, 1951, we had a definite slump.

(Testimony of Fred Drury.)

The Court: Well, you have ups and downs, but Mr. Lyon's question, as I understand it, is whether generally your business has been on the increase since you have been up there.

The Witness: Yes, sir, I imagine it has.

Q. (By Mr. L. E. Lyon): On both scratchers and centralizers?

A. Well, yes, I will say it possibly was. We work on a combined volume total, so far as my work is concerned.

Q. You spoke of the sales were increasing or something of the servicing of cementing heads. What has that got to do with it?

A. We don't order them or sell them. We have a cementing head we use for deep wells.

Q. And you have made the statement on direct examination that the Gulf Company, in this particular Pincher Creek field you spoke of, purchased the Gulf scratchers because of the service supplied by the cementing head, is that correct?

A. I didn't say preferred it. They have always used [1458] that cementing head, to my knowledge.

Q. And your company is the only one that supplied that cementing head, is that right?

A. Of that type, I believe we were the only one that supplied it, yes.

Q. When you were working with Halliburton, did they have a cementing head? A. Yes.

Q. And they supplied a cementing head to the companies, did they? A. That is right.

Q. Were there any other companies supplying cementing heads? A. Yes.

(Testimony of Fred Drury.)

Q. What companies?

A. Dowell, Inc., and Thorsen Cementing.

Q. How about Baker?

A. Dowell, Inc., and Baker are pretty much one and the same in Canada.

Q. Is Baker selling scratchers and centralizers in Canada? A. They are.

Q. And do you know whether Baker sold to the Gulf companies in Canada?

A. No, I do not. [1459]

Q. You have no knowledge of it?

A. No, sir.

Q. Do you know whether they sold them scratchers? A. No, I do not.

Q. Do you know whether they sold them centralizers? A. I do not.

Q. Do you know whether or not during the period of September, 1951, to June of 1953, the Gulf Company was purchasing scratchers from the Baker Oil Tool Company or through their agent in Canada?

A. No, I don't. I don't believe they had a scratcher at that time, Mr. Lyon.

Q. Do you have any knowledge with respect to sales that were made to the Gulf Company during that period of time, of centralizers by the Baker Oil Tool Company? A. No, I do not.

Q. Do you know how many centralizers were sold during that period of time to Gulf Oil Company in Canada by Halliburton, of centralizers?

A. No, I don't.

(Testimony of Fred Drury.)

Q. Do you know whether Gulf Oil Company in Canada purchased scratchers and centralizers from any other companies during that period of time?

A. I have no knowledge of their purchases.

Q. On this summary which you have produced, you have [1460] marked certain items through the months of June, July, and August of 1951, with asterisks. Those particular sales, according to your testimony, are sales which you picked out because of direct sale and direct delivery by the supply company to the Gulf Oil Company, is that correct?

A. That is right, most of them I picked up. I won't say I picked up every one of them.

Q. I mean all those that are on this summary, that is true, is it not?

A. The ones that I have summarized with the star, I have the delivery tickets for the scratchers. The centralizers were supplied by Weatherford, Ltd., from a supply store, and of those I believe 19 stars I delivered most of them myself.

Q. They were delivered by and directly sold by the supply company to the job, isn't that correct? Your statement is that you were on the job when they were delivered by the supply company, isn't that it?

A. No, I never did say they were delivered by the supply company. I picked them up at the supply store.

Q. And you have no entry or ticket of Weatherford, Ltd., showing the delivery of those particular scratchers to the Gulf Company, have you?

(Testimony of Fred Drury.)

A. No. Just a well report is the only way I can substantiate it. [1461]

Q. How many other sales were made during this period of time direct by the supply companies to the oil companies, of their own deliveries, of which you have no record on this summary? Do you know?

A. No, sir.

The Court: By "this summary" you are referring to what?

Mr. L. E. Lyon: By the "summary" I am referring to Exhibit 175, your Honor.

Now, is this record of this Gulf Company sale in August of 1953, available, Mr. Scofield?

Mr. Scofield: I have been furnished with evidently what appears to be an invoice, but there are no records here available at the present time as to any understanding or any limitations that were put upon the sale. I understand from the gentlemen who are here that there were no limitations on the sale.

Mr. L. E. Lyon: Well, where are those sales records of that sale?

The Court: Are there any records other than the invoice?

The Witness: The sales journal entry, your Honor.

The Court: No. Records of the sale, not subsequent records of the company, but records prior to the invoice.

Mr. Scofield: On this invoice copy, my attention is called to the fact that there appears the notation, "No discount" for this particular sale. [1462]

(Testimony of Fred Drury.)

Mr. L. E. Lyon: The witness has just testified——

Mr. Scofield: In August of 1953.

Mr. L. E. Lyon: The witness has just testified that there was approximately a 20 per cent discount on that sale.

The Witness: That is an invoice discount on it to the supply company. Two per cent if paid in 15 days, and we eliminated it on that.

Q. (By Mr. L. E. Lyon): Speaking of a two per cent discount which was not allowed on that sale, where it says "No discount," is that what you mean?

A. I believe so.

Q. And that doesn't refer to the discount to the Gulf Company? A. That is true.

Q. The invoice that has been handed to me is the invoice of delivery to the National Supply Company of August 8th or 13th of 1953. It calls for "250 7-in. CT"—that is close tolerance, isn't it?

A. That is right.

Q. "Scratchers W/3"—that is length of the wires? A. Three-inch bristles.

Q. Three-inch bristles—"9.10, $2,275.00, 19½"—what does that 19½ per cent there mean?

A. That was the discount to the Gulf Oil Company.

Q. That was the discount to the Gulf Oil Company? [1463]

A. And the discount to the supply company included in the 19½ per cent.

Q. Giving a total of $1,831.37? A. Yes.

(Testimony of Fred Drury.)

Q. The second listing in that particular invoice is "250 10¾-in. CT Scratchers, W/5"—meaning 10¾-inch close-tolerance scratchers with 5-inch bristles—"10.90"—meaning $10.90 list price, I presume? A. That is right.

Q. A total of $2,725.00, subject to a 19½ per cent discount again, being the same discount as above.

A. That is right.

Q. Giving a total of $2,193.62?

A. That is right.

Q. The third item on the list is "60 7-inch CT Spiral Centralizers"—"CT" again meaning close tolerance—— A. Close tolerance.

Q. $33.00 each, is that right?

A. That is right.

Q. A total of $1,980.00, subject to a 27 per cent discount, is that correct? A. Yes.

Q. Making a total of $1,445.40? A. Yes.

Q. The fourth and last item on this particular list [1464] to the National Supply Company is "40 10¾-inch Rotating Straight Centralizers, 45.10"—$45.10 each, a total of $1,804.00, subject to a 27 per cent discount, making a total of $1,316.92.

A. Yes.

Q. The total invoice being net $6,787.31, is that correct? A. Yes.

Q. Now, that invoice carries two dates on it?

Mr. R. F. Lyon: The witness has been nodding his head, and I am wondering whether the reporter is getting his answers "Yes."

The Witness: They were all "Yes, sir."

(Testimony of Fred Drury.)

Q. (By Mr. L. E. Lyon): Now, on this invoice there are two dates, 8-10-53 and 8-13-53. What do those two dates mean?

A. Invoice date and delivery ticket date.

Q. All right. Which is which?

A. This is the invoice date quoted here (indicating).

The Court: The delivery ticket date is earlier than the invoice date, is it?

The Witness: Yes, sir. They make the delivery first and an invoice later.

Q. (By Mr. L. E. Lyon): All right. Do you recognize this particular invoice as describing this particular sale that I have interrogated you about, of the 2,000 scratchers [1465] and 500 centralizers which were sold in one group to the Gulf Oil Company on August 13, 1953?

A. This is part of it, part of that order you quoted.

Q. This is part of that order?

A. If it came out of Tulsa. I don't know that it came out of Tulsa, though.

Q. You don't know where it came from?

A. It came out of the Gulf Oil, Stettler, as far as that invoice is concerned.

The Court: Is that invoice marked for identification?

Mr. L. E. Lyon: I have read the complete invoice into the record, I believe, isn't that correct?

The Court: He has read it? Answer out.

The Witness: Yes, sir.

(Testimony of Fred Drury.)

The Court: We will take the morning recess at this time.

(Recess.) [1466]

Q. Mr. Drury, in these invoices I refer you to another invoice of the same supply company, that is, the National Supply Company. Is that the order number?

A. That is the supply store order number.

Q. "RO," is that correct? A. "EO."

Mr. L. E. Lyon: 26531. What is the "C-3690"?

The Witness: "C" designates Canada. That is our invoice number.

Q. All right. That was made by your National Supply Company at Pittsburgh, Pennsylvania, was it not—both of them? A. Yes.

Q. That is, both the one that I now am referring you to and the earlier one of which I read the details into the record? A. That is right.

Q. The date of delivery of invoice of this second order number "26531" is likewise August 13, 1953, is it not?

A. This one here, August 13th also, yes; that is correct.

Q. The items called for on this particular order are to be delivered to The Hudson Bay Oil & Gas Co. of Edmonton, Alberta, Canada; by "this particular one" I mean "EO-26531"; that is correct, isn't it? [1467] A. That is correct.

Q. And they called for items of the same size and character, i.e., "10¾-inch rotating straight cen-

(Testimony of Fred Drury.)

tralizers," as called for by the earlier order number of the National Supply Company that went to the Gulf, and the earlier one being EO-3304; that is correct, isn't it? A. That is correct.

Q. They both called for 10¾-inch straight centralizers? A. That is correct.

Q. The discount given, including the "2% 15 days/net 30" stated on this second invoice EO-26531 for the centralizers is the same total discount, 27 per cent, on both invoices?

A. No. This one is 25.

Q. Plus the two?

A. Depending on whether they paid it in 15 days or not.

Q. All right. And the other one had a total discount on that type of centralizers of 27 per cent?

A. That is correct.

Q. So that if they paid within 15 days, they got the same discount on those 10¾-inch centralizers? A. That is correct.

Q. However, when it came to the 10¾-inch close tolerance scratchers with five bristles, the discount given National Supply on that date for sale to The Hudson Bay Oil Company was 10 per cent, as shown by this second order number, [1468] while that given to the National Supply for sale to the Gulf on that same day was 19½ per cent; isn't that correct?

A. That is true.

Q. Now, we take another order here, and here is the order number 27055, your Canadian number C-3749? A. That is correct.

(Testimony of Fred Drury.)

Q. The invoice date is September 29, 1953?

A. That is right.

Q. And that is also a sale to the National Supply Company at Pittsburgh, Pennsylvania, is it not?

A. That is right.

Q. And then this particular third invoice 27055, the sale was to be delivered to the National Supply, Edmonton store, for the Canadian Superior Unit Morton 9-19, is that correct?

A. That is correct.

Q. What does that mean?

A. That is their well number.

Q. That is the Canadian Superior Oil Company?

A. That is correct.

Q. And "Unit Morton" would be the name of the well, and the "9-19" the number, is that correct?

A. That is correct.

Q. Over on the side here is "3131." What is that?

A. That is delivery ticket number of Weatherford, Ltd. [1469]

Q. This invoice also carries "2% 15 days / net 30," and that means what? I mean "by this invoice" this particular one I am reading is 27055.

A. It means if the Supply store pays the invoice to us within 15 days they get 2 per cent discount.

Q. This invoice calls for close tolerance scratchers with three-inch bristles, quantity, 30 seven-inch close tolerance scratchers with three-inch bristles, and allows the National Supply Company on that date a 10 per cent discount, doesn't it?

(Testimony of Fred Drury.)

A. That's right.

Q. For sale to the Superior Oil Company?

A. That is right.

Q. And on the seven-inch rotating straight centralizers they got a discount of 25 per cent for sale to the Superior Oil Company, is that correct?

A. That is right.

Q. Here on September 29, 1953—and I refer to that date as the delivery date, is that correct?

A. That is the invoice date.

Q. Invoice date—is Jones & Laughlin Steel Co., sale made to the Jones & Laughlin Steel Sales, Drawer 2481, Tulsa 2, Oklahoma, on their order No. C909? A. That is right.

Q. And your Canadian order C-3760? [1470]

A. That is right.

Q. That sale being to Jones & Laughlin, I take it, for Gulf Oil Company, C.P.R. Christenson No. 8. That is the Gulf Canadian Oil Company, is it?

A. That is correct.

Q. That "C.P.R." means on the Canadian Pacific Railroad, "Christenson No. 8" is the name of the lease, and the well is "No. 8," is that correct?

A. Yes, sir.

Q. And this "3143" over here is the delivery ticket number, is that correct?

A. That is correct.

Q. All right. Now, what does the date underneath the first column of September 10, 1953, mean?

A. That would be date of delivery by us through the delivery ticket number.

(Testimony of Fred Drury.)

Q. That invoice also carries on it, that is, of the Jones & Laughlin Steel Sales order 309 which we are reading from, also the notation "2% 15 days / net 30," does it not? A. That is correct.

Q. It means they get a discount if they paid within 10 days, and if they did not pay within 30 days—— A. 15 days, that is right.

Q. Pardon me. Otherwise, that was correct. I made an error there. That calls for 44 seven-inch close tolerance [1471] scratchers with three-inch bristles and allows the Jones & Laughlin for delivery to the Canadian Gulf Oil Company on September 29, 1953, on that sale a 10 per cent discount, doesn't it? A. That is correct.

Q. And it calls for eight seven-inch rotating straight centralizers and allows the Jones & Laughlin a total discount of 25 per cent on that sale, does it not? A. That is correct.

Q. Now, do you know or have any knowledge whatsoever of the negotiation of this sale which is referred to by this first invoice that I gave you, where the Gulf Oil Company was given a preferential discount of 19½% on scratchers?

A. I had nothing to do with such a sale.

Q. You know nothing about it?

A. We made the sale.

Q. But you, as salesmanager, have no knowledge of it? A. In what way, Mr. Lyon?

Q. You have no knowledge of why this preferential discount of 19½% was given to them?

A. Other than the knowledge that is in the books there, the sales journal and the delivery tickets.

(Testimony of Fred Drury.)

Q. That is the only knowledge you have of it?

A. That is correct. [1472]

* * *

Recross-Examination

By Mr. L. E. Lyon:

Q. Do your people keep a general sales ledger?

A. We have a general ledger, yes.

Q. Does that general ledger total sales to companies?

The Court: To companies, supply [1481] companies?

Mr. L. E. Lyon: To companies of any kind.

The Witness: Oil companies, you are referring to?

Q. (By Mr. L. E. Lyon): Well, to supply companies or to oil companies.

A. It would show the total sales to supply houses, yes.

Q. Would it show the total sales to companies?

A. No, sir, not to my knowledge.

Q. Does it have any indication in it of sales to companies?

A. To the supply companies, yes, that is who we do all our business with.

Q. But not to the oil companies, not to the ultimate user?

A. No, sir, I don't believe so. [1482]

* * *

JESSE E. HALL, SR.

Cross-Examination
(Continued)

By Mr. L. E. Lyon:

Q. I place before you, Mr. Hall, two documents not previously marked for identification in this case, and which are exhibits in the Patent Office proceedings. I will ask you if you can identify these particular documents and, if so, state what they are.

Mr. L. E. Lyon: Perhaps counsel is willing to stipulate that these are true copies of contracts existing between Hall, Robinson, and the Coast Oilfield Supply Company, Cosco, as of June, entered into the 12th day of June, 1936, and the 15th day of April, 1937.

Mr. Scofield: Yes, I will stipulate that those are the two Cosco contracts as of the dates that appear on the agreements.

Mr. L. E. Lyon: I will ask that these contracts be received in evidence as defendants' exhibits next in order, being agreement of June 12, 1936, as Defendants' Exhibit CN, and the agreement of April 15, 1937, as Exhibit CO.

(The documents referred to were marked Defendants' Exhibits CN and CO, respectively, for identification.)

Mr. Scofield: These were not on the prior list?

Mr. L. E. Lyon: No. They were not.

The Court: Is there any objection to the [1483] offer?

(Testimony of Jesse E. Hall, Sr.)

Mr. Scofield: No objection to the offer except as to the materiality. I see no bearing it has upon the issues here involved, your Honor.

The Court: Objection overruled. They are received in evidence.

(The documents referred to, marked Defendants' Exhibits CN and CO, respectively, were received in evidence.)

Q. (By Mr. L. E. Lyon): I place before you a photostatic copy of a letter addressed to Samuel H. Robinson and J. E. Hall, of February 23, 1940, written by the Cosco Manufacturing Company, Mr. H. Lacy Sears, secretary, and will ask if you received the original of which that is a photostat?

A. I received that after so long a time.

Mr. L. E. Lyon: This is a copy of what you gave me?

Mr. Scofield: Subject to check.

Mr. L. E. Lyon: I will offer this in evidence.

Mr. Scofield: No objection.

Mr. L. E. Lyon: As defendants' exhibit next in order, CP.

The Court: It is received in evidence.

(The document referred to, marked Defendants' Exhibit CP, was received in evidence.)

Mr. L. E. Lyon: I have what I believe to be a true copy of a "Preliminary Statement of Jesse E. Hall, Sr., in Patent Office Interference No. 84,411," supplied to our office by Mr. Scofield. I would like

(Testimony of Jesse E. Hall, Sr.)
to offer that in evidence at this [1484] time, subject to correction against the original if any correction may appear.

Mr. Scofield: Yes, I would like to check that, your Honor. I have not had an opportunity to see the exhibit and check it against my files.

The Court: There is no objection to receiving it in evidence at this time upon the assumption that it is a true copy of the original?

Mr. Scofield: No objection.

The Court: Subject to correction?

Mr. L. E. Lyon: Subject to correction.

The Court: Very well. It is received in evidence.

The Clerk: As Defendants' Exhibit CQ in evidence.

(The document referred to, marked Defendants' Exhibits CQ, was received in evidence.)

Q. (By Mr. L. E. Lyon): Mr. Hall, in Exhibit CQ you state as your earliest date of the subject matter of the claims involved in that interference, the date of first disclosure as April 7, 1941. Is that correct? Will you answer the question?

A. That is correct.

Q. The application which was involved in that interference, Mr. Hall, was your Application Serial No. 55,619, was it not?

A. Will you give me that number again? [1485]

Q. Your Application Serial No. 55,619.

A. Well, it says here, Serial No. 627,013.

Q. Well, what does it say there? What do you mean, it says there?

(Testimony of Jesse E. Hall, Sr.)

A. "The Serial Number and filing dates of prior applications in the United States disclosing the invention set forth by the counts of the interference are:

"Serial No. 388,891—filed April 16, 1941"——

Q. Well, as a matter of fact, you signed your preliminary statement on August 1, 1950, did you not? A. I did.

Q. No. Pardon me. A. No.

Q. On the 12th day of May, 1950?

A. On the 12th day of May, 1950.

Q. Pardon me. I read the wrong date.

And had not the No. 627,013, application been abandoned by you on that date?

A. I don't recall. Whatever the date is of the abandonment of the application that appears on the application.

Mr. L. E. Lyon: May it be stipulated, Mr. Scofield, that the Interference No. 84,411 involved the Application Serial No. 55,619?

Mr. Scofield: Yes, that will be stipulated and that is Exhibit No. 69 in evidence. [1486]

Mr. L. E. Lyon: May I see Exhibit 69, please?

May it also be stipulated, Mr. Scofield, that the claims which were involved in that Interference No. 84,411 were Claims 23, 24 and 31 of the 55,619 application as those claims are shown—not shown, but formulated in the Application Serial No. 55,619, Exhibit 69 in evidence?

Mr. Scofield: Yes, those are the claims in the application. They were also the grounds of the inter-

(Testimony of Jesse E. Hall, Sr.)

ference in No. 84,411 which is in evidence here as Exhibits 71, 71-A and 71-B.

Q. (By Mr. L. E. Lyon): Is April 7, 1941, the date when you first disclosed to anyone a sidewise inclination of a bristle of a scratcher as you alleged in this preliminary statement under oath, Exhibit CQ, and which I place before you?

A. That is the earliest record that I have any record that I disclosed it to anyone that I recall.

Mr. L. E. Lyon: May I have Exhibit [1487] HH?

Q. I place before you a document heretofore marked Exhibit HH for identification, and ask you if you can tell me when you first saw a copy of this instruction bulletin, Exhibit HH, Mr. Hall?

A. I have no recollection at this time when I first saw this bulletin.

Q. Did you see it in 1940?

A. I have seen it many years back, but I couldn't say.

Q. Did you see it in 1940?

A. I possibly did.

Q. Did you see it in March or February of 1940?

A. I couldn't testify to that.

Q. You do not know what time in 1940?

A. This is like the Exhibit HH. I testified yesterday that that was a good replica of the Jones & Berdine. After going home and reading the Jones & Berdine and studying that, I see that there was very little effort made to make a replica of it. I would like to correct that.

It is like dates on this. I can remember that this

(Testimony of Jesse E. Hall, Sr.)

has been out a long while, but the actual dates I couldn't remember.

Mr. L. E. Lyon: Your Honor, as to the voluntary statement made, not responsive to the question, I move that that be stricken.

The Court: What portion is that?

Mr. L. E. Lyon: That is a reference to the Exhibit HH, [1488] no question of which was asked this witness at the present time.

The Court: The motion is granted

Q. (By Mr. L. E. Lyon): So your best recollection is that you saw Exhibit HH sometime in 1940?

A. Well, I would rather not say 1940, because I have been listening at your questions for a long time and I am looking for tricks all the time.

Q. There is no trick in that question. It is a very simple question.

A. And I don't know. I have no recollection when I did see it first, only I know I have been seeing it a long while and it has been in other different states. If you can refresh me of the date that I might have seen it first, I would be glad to have your information.

Q. Did you see it before the A.P.I. meeting on March 19 of 1940?

A. I don't think I were here on the A.P.I. meeting.

Q. I said before that. I didn't say on that date.

A. I don't believe so. I just wouldn't want to testify.

(Testimony of Jesse E. Hall, Sr.)

Mr. L. E. Lyon: May I have Exhibit 42 for identification? That is the same as Exhibit EE for identification.

Mr. Scofield: Exhibit 40, your Honor, is a physical exhibit of a scratcher.

Mr. L. E. Lyon: I said "42." [1489]

Mr. Scofield: 42 is Bulletin 101 of B & W.

Mr. L. E. Lyon: That is right.

Mr. Scofield: EE is an invoice.

Mr. L. E. Lyon: I was just handed Exhibit 42 for identification, your Honor. Pardon me. I don't know how it got over on our table but it was there already.

I will ask you, Mr. Scofield, if you are willing to stipulate, if you did not in the public use proceedings before the Patent Office, that Exhibit 42 for identification, that is, the B & W bulletin 101, was printed and distributed by B & W prior to March 19, 1940?

Mr. Scofield: I think, as I recall the stipulation there in the public use proceedings, Mr. Barkis, I think, testified that he had these bulletins at the time of the meeting. I think there were some invoices as to the art work done during that time.

I am willing to stipulate that the bulletin was in existence at the A.P.I. meeting in 1940.

Mr. L. E. Lyon: And was handed out at the A.P.I. meeting in 1940?

Mr. Scofield: I think Mr. Barkis so testified, and I have no reason to think otherwise.

Mr. L. E. Lyon: With that stipulation, I will

(Testimony of Jesse E. Hall, Sr.)

offer this bulletin in evidence as the Defendants' Exhibit, I believe, CR. [1490]

The Court: Received in evidence.

We will take the noon recess.

Mr. L. E. Lyon: Wait a minute. Pardon me. Not as CR. That has previously two identification numbers. I don't want to just add further confusion to this record, if your Honor will bear with me just a minute until we correct that CR. That is not correct. It is already identified as Plaintiff's Exhibit 42 for identification and as the Defendant's Exhibit EE for identification according to the Plaintiff's list.

I will ask that it be received as Exhibit EE.

The Court: Do you have an EE for identification, Mr. Clerk?

Mr. Scofield: No, that is not correct, your Honor. EE, according to our list——

Mr. L. E. Lyon: You are right. Pardon me. EE is not the bulletin; it is the invoice for the bulletin.

I don't want to confuse this record any more, and which I just did. I am sure that we have it marked.

The Clerk: No, your Honor. I don't have any 42, no, sir. I don't have 42 or I don't have 43.

Mr. L. E. Lyon: Let it be marked Exhibit CR, then, your Honor. I do not find it at the present time. If there is a further duplication, we will note it later.

The Court: Very well, received in evidence as Defendants' [1491] Exhibit CR. [1492]

* * *

Mr. L. E. Lyon: I would like to offer in evi-

(Testimony of Jesse E. Hall, Sr.)

dence at this time, your Honor, Defendants' Exhibit CS, certified copy of the judgment of January 8, 1951, entered in the case of Hall v. Keller, Civil Action No. 2315, referred to as the Lake Charles centralizer case, which provides that no damages be allowed to the plaintiff in that action, and I will ask also that it may be stipulated that no appeal was ever taken from that final judgment.

Mr. Scofield: That is right, your Honor.

The Court: Is it so stipulated?

Mr. Scofield: That is, petition for certiorari was taken and it was denied.

Mr. L. E. Lyon: Well, there was no appeal taken from this particular judgment, Exhibit CS, that judgment is final, CS.

Mr. Scofield: That is the final judgment in the case.

The Court: After judgment was entered, I take it, after the opinion of the Court of Appeals of this circuit there?

Mr. L. E. Lyon: That is correct.

Mr. Scofield: Right after the certiorari was denied.

Mr. L. E. Lyon: But appeal still laid from that final [1493] judgment, and what I want is a stipulation that no appeal was taken from that final judgment.

Mr. Scofield: Not so far as I know.

The Court: It will be so stipulated.

It will be received in evidence as Defendants' Exhibit CS, Mr. Clerk.

(Testimony of Jesse E. Hall, Sr.)

The Clerk: Yes, your Honor, Defendants' Exhibit CS in evidence.

(The document referred to, marked Defendants' Exhibit CS, was received in evidence.)

Mr. L. E. Lyon: I would like to have Exhibit No. 1.

Q. I place before you, Mr. Hall, Plaintiff's Exhibit No. 1, that is the file wrapper of the 388,891 scratcher application which was filed in the Patent Office on April 16, 1941, that being a certified copy of that application to and through the abandonment of the application, and I also place before you Defendants' Exhibit CJ for identification. I would like to have you compare Exhibit CJ for identification with the description and drawing of your application, and by "your application" I mean Exhibit No. 1, and tell me if Exhibit CJ is a fair replica of what is shown in your application.

A. It is a fair replica.

Q. In every respect?

A. Well, it doesn't show it mounted on the pipe, which [1494] is one of the measures——

Q. Is there any difference whatsoever that you can discern between Exhibit CJ and what you disclosed in your application as shown by Exhibit 1 in evidence?

A. I believe the claims read upon it.

Q. I am not asking you about the claims, Mr. Hall. I am asking you about the drawings and the specifications.

(Testimony of Jesse E. Hall, Sr.)

A. Well, I believe the specifications would pretty closely read on it.

Q. You make no reservation whatsoever, then, that it is a true replica?

A. Oh, I don't know what you would call perfect, but it comes under the scope of the patent, yes.

Q. I want you to take your full time and I don't want any claim made that I am propounding any trick question to you or anything of that kind. I want you to take your full time and make this comparison.

A. Well, it is a replica of what I had in mind in the invention, the sidewise bristle, the springs mounted upon the collar. It has the collar. If it had the pipe, it would have that; and if it had the lugs, it would have that, and it has the springs in the orbit and it so functions as I intended for it to function.

Q. As far as the scratcher, Exhibit CJ for identification, is concerned, as differentiated from the fact that it [1495] is not mounted on a pipe with lugs, you can see no difference whatsoever?

A. As well as a lot of other scratchers.

Mr. L. E. Lyon: I offer Defendants' Exhibit CJ in evidence as Defendants' Exhibit CJ. [1496]

* * *

The Court: Received in evidence.

(The document referred to, and marked Defendants' Exhibit CJ, was received in evidence.)

(Testimony of Jesse E. Hall, Sr.)

Cross-Examination
(Continued)

Mr. L. E. Lyon: May I have Exhibits A and B, please, Mr. Clerk?

Q. I place before you, Mr. Hall, a paper heretofore marked for identification as Exhibit A, and ask you if you can identify this paper and tell me what it is, and what you had to do with it, if anything?

A. This is an ad that I had put in the Oil Weekly of July 7, 1941.

Q. Do you recognize that as the ad that you personally placed in the magazine at that time?

A. I personally done a lot of work on the ad and authorized the ad to be placed in the magazine.

Q. And this advertisement did appear in the magazine of July 7, 1941, and that magazine is the Oil Weekly, is it not?

A. That is correct.

Q. The Oil Weekly is a publication or periodical of the oil industry, is it not? A. It is.

Q. Has world-wide circulation?

A. I suppose so. [1497]

Q. You know it does, don't you?

A. Well, I understand it does. I haven't seen its circulation world-wide.

Q. You have seen it in Venezuela?

A. I have saw it in Venezuela and Mexico.

Q. And Mexico and Canada?

A. No, I haven't seen it in Canada.

Mr. L. E. Lyon: I will ask that the document

(Testimony of Jesse E. Hall, Sr.)

heretofore marked Exhibit A, being page 37 of the July 7, 1951, issue of the Oil Weekly be received in evidence as Defendants' Exhibit A.

Mr. Scofield: No objection.

The Court: Received in evidence.

(The document referred to, and marked Defendants' Exhibit A, was received in evidence.)

Q. (By Mr. L. E. Lyon): I place before you a second photostatic paper marked Exhibit B for identification and ask you if you can identify that paper.

A. Exhibit B is an ad that I had made and circulated to the trade.

Q. That Exhibit B appeared in the September 11, 1941, issue of the Oil & Gas Journal, I believe, on page 65, did it not, Mr. Hall?

A. I never noticed, Mr. Lyon.

Q. Well, that is the Oil & Gas Journal paper, isn't [1498] it?

Will it be so stipulated, Mr. Scofield?

A. That is the September 11, 1941. I don't see "Oil & Gas Journal" on it, but I had it put in the magazine.

Q. And it was in the Oil & Gas Journal?

A. That was one of the popular magazines I used.

Q. And the Oil & Gas Journal is also another periodical of general circulation in the oil industry, is it not?

A. Yes. They claim to have world-wide circulation.

(Testimony of Jesse E. Hall, Sr.)

Mr. L. E. Lyon: I will ask that this paper, Exhibit B, being page 65 of the Oil & Gas Journal of September 11, 1941, be received in evidence as Defendant's Exhibit B.

The Court: Is there objection?

Mr. Scofield: No objection.

The Court: Received in evidence.

(The document referred to, and marked Defendants' Exhibit B, was received in evidence.)

Q. (By Mr. L. E. Lyon): When, Mr. Hall, was the business of the Houston Pipe Appliance Company taken over by you in the business of the Weatherford Oil Spring Company?

A. Oh, I taken in management sometime in the latter part of the year 1940.

Q. And the business under the name of Houston Pipe Appliance Company was discontinued at that time?

A. Very soon after, as quick as the management of the [1499] company could be announced.

Q. And the Weatherford Spring Company, I believe you have testified, was you doing business under that fictitious name and style?

A. That is correct.

Q. And it continued to be that way, the way you conducted all of the business, until December 15, 1948, is that correct?

A. Qualify what you mean by "all the business."

(Testimony of Jesse E. Hall, Sr.)

Q. Well, the business of selling scratchers and centralizers was conducted by you under the name of Weatherford Spring Company 'till the formation of Weatherford Oil Tool Company and its taking over your business on December 15, 1948?

A. That is correct.

Q. I don't mean to imply by that the Weatherford Oil Tool Company was formed or organized on December 15, 1948, because the record shows that it was formed in the preceding summer; that is correct also, isn't it?

A. Well, whatever the record shows. It is of record and I want to stand on the records.

Mr. L. E. Lyon: I would like to have Exhibit BA, please, Mr. Clerk.

The Clerk: BA.

Mr. L. E. Lyon: It was our original exhibit Six B's. [1500] I will use a copy of it.

The Clerk: This one starts with BB.

Mr. L. E. Lyon: Mark this preliminary and I will use this one.

Q. I hand you a copy marked BA and ask you if you can identify that, Mr. Hall?

A. Yes, I identify that as an ad run in the Oil Weekly, Volume 112, page 82, December 13, 1943.

Q. Was that placed in that magazine by you?

A. It was. I remember a letter of my well completions that I was sending out to the trade.

Mr. L. E. Lyon: I will offer this paper as thus identified by the witness in evidence as Defendants' Exhibit BA; and you will find the same at page 82 of December 13, 1943, of the Oil Weekly.

(Testimony of Jesse E. Hall, Sr.)

Mr. Scofield: So stipulated.

The Court: Received in evidence.

(The document referred to, and marked Defendants' Exhibit BA, was received in evidence.)

Q. (By Mr. L. E. Lyon): Mr. Hall, you have referred to an article referred to in Exhibit BA, as therein stated to be full "Index for Well Completions," that being set forth in that advertisement in quotations. I believe during the taking of your deposition in the Patent Office in the public use proceedings I asked you if you were able to [1501] produce a copy of it and you said that you were not. You are not now able to produce a copy of it?

A. I saw a copy of—there were several volumes written of Well Completions.

Q. I believe that you defined that as a typewritten article of quite a few pages.

A. Here is one of the pages, I believe both of them. It is on both sides.

Q. You say this is one of the pages which was included with the Index?

A. A few well completions papers that I have written and distributed to the trade as early as the early part of 1940. This particular paper, I believe, that went to the—first I saw, it was distributed to the Union Oil Company in February of 1940.

Q. This is entitled Exhibit R, filed April 6, 1951, in case 8191-BH. What was that case?

A. I don't know. You have been in all of them,

(Testimony of Jesse E. Hall, Sr.)

so I guess you can identify it quicker than I [1502] can.

Mr. L. E. Lyon: "BH" means Ben Harrison, I believe, and I have not appeared in any case there——

The Witness: Oh, that is one of the cases that you fellows trumped up and tried down there in Ben Harrison's court, and that happened to be one of the documents.

Q. (By Mr. L. E. Lyon): You say we trumped that case up? A. You certainly did.

Q. And the judgment in that case was that you owed Mrs. White, I believe, some money, wasn't it?

A. Yes, and it is so stated in that case and testified that you people ramrodded the case.

Q. I would like to see any such testimony, Mr. Hall.

The Court: Let us not get into any such personalities if we can avoid it.

Mr. L. E. Lyon: Well, it is not true, your Honor. I took no part in that case, I had no part in it, and I never even knew what the issues of that case were.

The Court: Very well.

Mr. L. E. Lyon: Except to appear one day with Mr. Wright when he was called as a witness to testify before Judge Harrison.

The Court: Let us move on. The case is in Judge Harrison's court, I take it, and is not involved here, unless it is relevant to some issue here.

(Testimony of Jesse E. Hall, Sr.)

Mr. L. E. Lyon: No, I don't believe it is relevant here. [1503]

The Witness: I believe it is, Judge, because——

The Court: Well, you talk to your lawyer about it and then you can recall it.

Q. (By Mr. L. E. Lyon): Well, this article, Exhibit R in the 8191-BH case, is not the "Index to Well Completions" referred to in Exhibit BA, is it, Mr. Hall?

A. Well, it could be. I wrote several articles and they were put together, and any one of them are all practically right along the same line. It is all my work, and any one of them will fit the description of my method that I developed in 1935 and have been working at all the way through, the way of cleaning the well bore. It is the method, and it is well described there, too.

Q. Didn't you send out a particular typewritten article which was headed "Index to Well Completions," as referred to in Exhibit BA?

A. I recall of making a front page of well completions, and in that, in some cases, I sent all the articles that I have written. This is one that has been distributed all through the years.

Q. And you cannot define that article as being a typewritten article entitled "Index to Well Completions, by Jesse E. Hall, Sr," is that correct?

A. Well, this article has been typewritten.

Q. I just ask you to answer the question, [1504] please. A. We probably ran out of these.

No, sir, I haven't any other at this time that I

(Testimony of Jesse E. Hall, Sr.)

know of, but I know there were several other written articles.

Mr. L. E. Lyon: I will ask that this document with the cellophane cover, which I have just produced, be marked as Defendants' Exhibit CT for identification.

Mr. Scofield: What is it entitled, please?

Mr. L. E. Lyon: "Index to Well Completions."

Q. I hand you a document just marked Defendants' Exhibit CT and ask you if you can identify that. You may take it out of the cellophane cover or do anything else that you want to with it in making that identification.

A. Yes, I can identify this as my work.

Q. Isn't that the article referred to in Exhibit BA? A. It could be.

Q. Well, isn't it?

A. Well, it could be, with—it is, together with other articles that were sent with it.

Q. All right. And this is the article which you wrote? A. That is correct.

Q. And is the article referred to under that title in Exhibit BA, is it not?

A. It is part of the article.

Mr. L. E. Lyon: All right. I will offer in [1505] evidence at this time the document heretofore identified as Exhibit CT for identification, as Exhibit CT.

Mr. Scofield: No objection.

The Court: It is received in evidence.

(The document referred to, marked Defendants' Exhibit CT, was received in evidence.)

(Testimony of Jesse E. Hall, Sr.)

The Court: Now, how is it characterized?

Mr. L. E. Lyon: That is the article entitled "Index to Well Completions," referred to in the advertisement of Weatherford Spring Company, Exhibit BA.

Q. Exhibit CT is at least one of the articles that you sent out whenever you received a response to the ad, Exhibit BC, BA, is it not, Mr. Hall?

A. It is, over a certain period of time.

Q. Over what period of time?

A. Well, I believe since '48 I haven't sent out anything.

Q. Well, from the time of the ad in 1943 up until '48, then, is that correct?

A. That is correct.

Mr. L. E. Lyon: Will the clerk produce for me Exhibits BK and BL, please?

The Clerk: All right.

Mr. L. E. Lyon: Exhibit BK is the patent.

I would like to ask at this time, your Honor, for leave [1506] to substitute photostatic copies of the original copies produced of both exhibits CS and CT.

The Court: Is there any objection?

Mr. Scofield: No objection.

Mr. L. E. Lyon: And I will ask if the clerk can have those photostatic copies prepared for me, if you will, please?

The Clerk: Yes, sir.

Mr. Scofield: I have been furnished copies of these and I would like to have the clerk make a photostatic copy for the plaintiff of Exhibit CT and of Exhibit CS.

(Testimony of Jesse E. Hall, Sr.)

Mr. L. E. Lyon: Will you stipulate that this is a true copy (indicating document)?

Q. I place before you, Mr. Hall, Exhibit BK for identification and will ask you if you can identify that?

A. This is one of my patents, pipe-line swab, application filed May 29, 1943, Serial No. 489,046, which matured into Patent No. 2,392,144.

Mr. L. E. Lyon: I will ask that the document just identified by the witness be received in evidence as Defendants' Exhibit BK, and you will find that Exhibit BK is a photostatic copy of Letters Patent No. 2,392,144, entitled "Pipe Line Cleaner."

The Court: Is there objection?

Mr. Scofield: No objection.

The Court: It is received in evidence. [1507]

(The document referred to, marked Defendants' Exhibit BK, was received in evidence.)

Mr. L. E. Lyon: And I might, for the benefit of the parties' reading substitute this white photostat for the black one. I think anyone can read it easier.

The Court: Very well.

Mr. L. E. Lyon: I likewise offer in evidence at this time photostatic copy of the certified copy of the file wrapper and the application which resulted in grant of the patent, Exhibit BK, and which was heretofore marked as Exhibit BL, it having been agreed that this photostat of the certified copy can be used in place of the photostat.

Mr. Scofield: That is agreeable.

(Testimony of Jesse E. Hall, Sr.)

The Court: It is so ordered.

(The document referred to, marked Defendants' Exhibit BL, was received in evidence.)

Q. (By Mr. L. E. Lyon): The pipe-line cleaner shown in this patent, Exhibit BK, Mr. Hall, is, is it not, a duplicate of your reversible scratcher which you have defined?

A. It is a duplicate, but the job that it is doing is not a duplicate of well completion, because the pipe-line pig, as we call it, only travels one direction and it has nothing fastened to either end of it.

Q. I believe you have called it in your catalog a go-devil, isn't that correct? [1508]

A. A go-devil or pig, either one. They are well known as either one of them.

Q. And you have testified in a Patent Office proceeding that the device never did work out for that use, isn't that correct?

A. Never did work for that use?

Q. Yes.

A. We have never developed it for that use, to any extent, no.

Q. You had some few sales in south Texas?

A. We had a lot of test work that went on, on it.

Q. But it stopped right there?

A. Well, I had other things to do. I imagine it would.

Q. I am just asking you for a fact. It stopped right there, after the test work?

A. That is right.

(Testimony of Jesse E. Hall, Sr.)

Q. You did not make any sales of them?

A. No—we made some sales, yes, sir.

Q. Well, over what period of time?

A. That I couldn't say. I have even forgotten when the thing was put on the market or when we worked with it.

Q. You were making no sales of the device at the time you quit business with it in December, 1948, were you?

A. I don't believe so. I do recall, I believe, at that time, they were doing some work on it. [1509]

Q. And as far as the Weatherford Oil Tool Company is concerned, to your knowledge they never sold any such device, is that right, as shown in Exhibit BK?

A. To my knowledge, they haven't.

Q. In Exhibit BL, Paper No. 8 of that file wrapper, which bears the stamp of the Patent Office of June 19, 1945, there is reference made to an interview had with the primary examiner and the examiner in charge of this application, that interview having been had on or about the day given or the preceding day, according to this record. Were you present at that interview?

A. I have no recollection of being present at any such interview. [1510]

Mr. L. E. Lyon: I would like to have Exhibit K, please.

I would like at this time, your Honor, to—just a moment.

Q. I hand you a printed document entitled: "An-

(Testimony of Jesse E. Hall, Sr.)

swer by Hall to Order to Show Cause in the United States Patent Office before the Honorable Commissioner of Patents," and refer you to pages 33 and 34 of the printed document, and will ask you if you can identify the printed correspondence and wire as set forth on those pages as being true copies of correspondence had by you with Mr. Scofield, your attorney?

A. I don't recall it, but if Mr. Scofield sent it to me, I am sure that I received it.

Mr. L. E. Lyon: Will you stipulate, Mr. Scofield, that these Exhibits A, B and C on pages 33 and 34 of this document are true and correct copies of the correspondence that you had with Mr. Jesse E. Hall?

Mr. Scofield: Yes, sir.

Mr. L. E. Lyon: On the dates given?

Mr. Scofield: Yes, sir. Those are in a brief I filed.

Mr. L. E. Lyon: I will ask at this time that these three communications referred to as Exhibits A, B and C, and forming an appendix to the "Answer by Hall to Order to Show Cause in the United States Patent Office before the Honorable Commissioner of Patents" be received in evidence as Defendants' Exhibits CU-1, -2 and -3. [1511]

The Court: Is there objection?

Mr. Scofield: No objection.

The Court: So ordered.

Mr. Scofield: The CU-1 -2 and -3?

Mr. L. E. Lyon: CU-1, -2 and -3. And ask that they be so marked. I will also ask leave at the

(Testimony of Jesse E. Hall, Sr.)

present time to substitute photostatic copies of these three exhibits in place of the copies produced and now marked.

The Court: So ordered.

(The documents referred to, and marked Defendants' Exhibits CU-1, CU-2 and CU-3, were received in evidence.)

Q. (By Mr. L. E. Lyon): Mr. Hall, in Exhibit CU-1, as referred to on the first line, on June 20, 1945, there was sent you for approval proposed drawings to be filed in a new continuation-in-part application in the above case.

I will ask that that correspondence be produced at this time. And this, your Honor, I might state is renewing the written demand made at the start of this trial for the production of these documents. These letters have been voluntarily produced. They cannot claim privilege.

Mr. Scofield: These papers, your Honor, were letters passed between Mr. Hall and myself with respect to the filing of application for patent. As the first paper or the first letter, was a letter that contained the disclosure. Those [1512] same papers that they are now requesting were requested in the Patent Office and we at that time did not produce them, and the Patent Office did not require us to produce them. I have no objection to producing these exhibits.

The Court: Very well.

Mr. Scofield: I will produce them if they are

(Testimony of Jesse E. Hall, Sr.)

here. That is, I have this application here. Whether I have it in court at the present time, but if I haven't got it here, why, I will produce the papers from my room by tomorrow morning.

The Court: Is that agreeable, Mr. Lyon?

Mr. L. E. Lyon: Well, I don't know what he means by "those papers" because I am renewing the demand for all of this correspondence which is here identified and the whole chain of correspondence between Mr. Scofield and Mr. Hall as shown by these exhibits CU-1 and CU-3, leading up to the filing of the '627 application. And if that is what he says he will produce tomorrow morning it is satisfactory to me.

Also there are certain other things referred to in this correspondence that may have to be produced also, I believe, your Honor. I want the full and complete matter disclosed.

The Court: Will you bring the entire file, Mr. Scofield, tomorrow morning at 10:00 o'clock?

Mr. Scofield: Yes, I will bring the entire file.

The Court: Very well.

Q. (By Mr. L. E. Lyon): I place before you, Mr. Hall, [1513] Exhibit K in evidence, it being a file wrapper of the application Serial No. 627,013, filed November 6, 1945. I will ask you to refer to the drawings and specifications of this application and to answer these questions: The drawings of this application included in Exhibit K include how many figures? A. Three figures.

Q. You had better look at the next page, Mr. Hall.

(Testimony of Jesse E. Hall, Sr.)

A. I am looking at the page you opened for me. Three figures on the first page and three figures on the second page.

Q. That is, it includes Figures 1, 2, 3, 4, 5 and 6, does it not? A. That is correct.

Q. Figure 3, I take it you will state, indicates a scratcher, Exhibit CJ, the one you previously identified, is that correct?

A. It comes under that scope, yes.

Q. Figure 1 shows a scratcher like that exhibited in Exhibit A—it is that advertisement of July 7, 1941—does it not? A. No, sir.

Q. In what respect does it differ, if any?

A. The difference in that, which was a cross section of Figure 2, the coiled springs are radial.

Q. Are what?

A. The coiled springs are radial to the [1514] casing.

Q. Is that the only difference?

A. And the coiled springs in this here——

Q. Exhibit A, you mean, the advertisement?

A. Exhibit A, the advertising, the coiled springs are at an angle.

Q. Any other difference?

A. As from a patent structure, I would say no, there is not a difference. These springs are——

Q. Do you mean by the springs the wires or bristles?

A. The wire tangs are crossed, but that doesn't change the function in the well bore at all.

Q. Any other difference?

(Testimony of Jesse E. Hall, Sr.)

A. That I know of.

Q. Any other difference?

A. I don't see any difference at this time.

Q. All right. In Figures 4, 5 and 6, there is illustrated what you have described, I believe, as a close tolerance scratcher, is that correct?

A. That is correct.

Q. I place before you at this time, Mr. Hall, a device in which I have had punched one of the retaining rivets or studs to release one of the scratcher wires. I place both of these before you at the present time, asking the clerk, first, to mark the same as Exhibit CV-1 and CV-2, CV-1 being the entire scratcher, and CV-2 being the separated [1515] scratcher wire.

I ask you if you can identify this scratcher, Exhibit CV-1, with the detached wire, Exhibit CV-2, for identification?

A. CV-1 is a scratcher that was made by me.

Q. Close tolerance?

A. It is a close tolerance scratcher but it is not the type of close tolerance scratcher that shows in this drawing.

Q. Is Exhibit CV-2 a correct illustration of the wires of that scratcher detached from the collar or supporting collar?

A. It shows to be a close replica of it.

Mr. L. E. Lyon: I will offer in evidence at this time Exhibits CV-1 and CV-2 as heretofore marked for identification, as Exhibits CV-1 and CV-2; and will define the Exhibit CV-1 as a close tolerance

(Testimony of Jesse E. Hall, Sr.)

scratcher manufactured by Mr. Hall, and CV-2 is a detached wire produced from Exhibit CV-1 by punching out one of the rivets of Exhibit CV-1.

The Court: Is there objection to the offer?

Mr. Scofield: No objection.

The Court: Received in evidence.

(The articles referred to, and marked Defendants' Exhibits CV-1 and CV-2, were received in evidence.)

Q. (By Mr. L. E. Lyon): I will ask you, Mr. Hall, to state in what way, if at all, Exhibit CV-1 differs from the structure shown and described as a close tolerance scratcher in Figures 4, 5 and 6 of the application Serial No. 627,013, [1516] Exhibit K?

Mr. Scofield: May I have that question?

(Question read by the reporter.) [1517]

A. In Figures 4, 5 and 6, which together show the type of spring, the type of scratcher that I was endeavoring to get patent on. By making a hand test, I had four coils to make the function that was required in the type of a scratcher that I was filing on. And I wound a coil, starting with a large coil, and wound four wraps by hand with soft wire, and wound them all together where they come up like a pyramid; and then, with the finger on the scratcher taking off at a sidewise direction from the center of the convolutions of the coil as it tapered in from the large coil to a smaller coil and smaller coil and a smaller coil to the finger.

(Testimony of Jesse E. Hall, Sr.)

When I started to manufacture that coil, I couldn't find any way to manufacture it and get those coils together with tempered wire.

Long before I did that, I was making this scratcher here (indicating) which was never satisfactory, it never had enough of coils in it, but it did do kind of a job under a fashion.

Mr. Scofield: Give the exhibit number.

The Witness: This is Exhibit CV-1. It has a coil. I put a coil and three-quarters in it. It doesn't have enough of coil for the spring to make the pivot, but due to the fact that there was such a demand for such a close tolerance, we compromised in using them and sold them. [1518]

The coil comes around and comes over from the top. We couldn't push it in, and it is bent up from the sides. It doesn't come up from the helical thing. It is riveted on inside the bristle. Inside of the band, the bristle is the same as the other. It comes off to a sidewise direction the same as the other, but it doesn't have sufficient spring in there to make the coil.

Q. (By Mr. L. E. Lyon): Do you know whether the Exhibit CV-1 type of scratcher is still being sold by the Weatherford Oil Tool Company?

A. I believe a similar scratcher to this is still being sold, because there is no one who has yet been able to beat this, and, as I say, there is such a demand for a close-tolerance scratcher that this scratcher is being sold as a compromise.

Q. Is this the scratcher referred to in your

(Testimony of Jesse E. Hall, Sr.)

letters of January, 1944, which you wrote to your son John Hall at Bakersfield, California, from Texas, and which letters have been here offered in evidence as Exhibits BW, BX and BY, which have been so marked for identification?

And will you give me those letters, please, Exhibits BW, BX and BY?

I place before you Exhibits BW, BX and BY for identification so that you may answer the last question, Mr. Hall.

A. At present, I couldn't tell from this unless I could [1519] see one of those scratchers that is mentioned. I made a close-tolerance scratcher attempt ahead of this one. Whether it was the one ahead of this one or not, I couldn't tell you just from those letters.

Q. Now, do you have any recollection of what you offered for sale in January of 1944, as shown by these letters, Exhibits BW, BX and BY?

A. I was offering some type of close tolerance and I had one other close-tolerance scratcher that came ahead of this, along about the same time.

Q. Were you offering Exhibit CV-1 for sale at that time?

A. I would say close around to that time, but I do not remember the exact date that this come onto the market, but there was one close-tolerance scratcher ahead of this one.

Q. Well, would you say you were offering Exhibit CV-1 type of close-tolerance scratcher for sale during the month of January, 1944?

A. I was offering a close-tolerance scratcher.

(Testimony of Jesse E. Hall, Sr.)

Q. I am asking you about this one.

A. That I couldn't state.

Q. Have you any records that show when you were offering Exhibit CV-1 for sale?

A. The only way that I could place this being offered at that time would be through some of the advertising. We [1520] tried to cover everything we had in advertising, by photographs.

Q. What is the difference, if any, between what you say preceded this Exhibit CV-1 and this Exhibit CV-1?

A. The first close-tolerance scratcher I made, I made for Odessa, where they have very slim hole drilling for the Humble Oil Company. I had the coil in it that the usual scratcher has, and I thinned the collar action and cut the springs out and we offered them what we called a streamlined scratcher, and later improvements developed into this. Now, when it came in, I couldn't tell you just the exact date.

Q. Would you say you were not offering Exhibit CV-1 for sale in January, 1944?

A. No, I wouldn't.

Q. You have looked at Exhibits BW, BX and BY for identification. Do you identify those documents as letters which you wrote, yourself, Mr. Hall?

A. I do. They are original letters written by me.

Q. Well, these are photostats of the original letters.

A. That is what I mean. Pardon me. I am looking out for you all the time, anyway.

(Testimony of Jesse E. Hall, Sr.)

Mr. L. E. Lyon: I will offer in evidence the documents which have previously been marked for identification Defendants' Exhibits BW, BX and BY, as Defendants' Exhibits BW, BX and BY, and I will define those for the purpose of [1521] the record:

Exhibit BW is a letter dated January 1, 1944, written by Jesse E. Hall, Sr., to John Hall at Long Beach, California, from Weatherford, Texas.

Defendants' Exhibit BX is a photostatic copy of a letter written by Jesse E. Hall, Sr., to John A. Hall at Long Beach, California, dated January 5, 1944, and also I believe written from Weatherford, Texas, although it does not show.

Q. Was this also written from Weatherford, Texas?

A. Mr. Lyon, as I recall at this time——

Q. Just a moment. Just answer the question.

A. Yes, that is from Weatherford, Texas.

Mr. L. E. Lyon: All right. Wait until I get these in.

Defendants' Exhibit BY I will identify as a photostatic copy of a letter of January 15, 1944, writtten by Jesse E. Hall, Sr., to John A. Hall at Long Beach, California, and written from and sent from Weatherford, Texas.

The Court: Is there objection to the offer?

Mr. Scofield: No objection.

The Court: Defendants' Exhibits BW, BX and BY for identification are received in evidence.

(The documents referred to, marked Defend-

(Testimony of Jesse E. Hall, Sr.)

ants' Exhibits BW, BX and BY, respectively, were received in evidence.)

The Court: You were about to make some explanation?

Mr. Scofield: What is your explanation? [1522]

The Witness: I recall this, your Honor: Recently we were taking depositions at Houston. I spent a week or so down there, and they had the mechanics that made these and testified.

The Court: By "these" you refer to the scartcher which is Exhibit CV-1?

The Witness: That is correct. And there were documents and testimony and all that went on there for many days, of the mechanics that made these, the tools that made them, and when they made them. They are all of record in depositions in the public-use trial.

The Court: Do you remember what time it was?

The Witness: No, I don't, your Honor. I was not present all the time when they were taking the depositions.

The Court: We will take the afternoon recess.

(Recess.) [1523]

Q. (By Mr. L. E. Lyon): Referring to Exhibit K, Mr. Hall, what is your understanding of the statement in your application that "the whiskers project at an angle from the sleeve simulating the trajectory of bodies thrown from the sleeves were the sleeve rotated rapidly"?

A. My understanding of that is the language

(Testimony of Jesse E. Hall, Sr.)
that the lawyers used to describe the sidewise bristle as it was turning a trajectory would throw to that direction. In other words, it is more what we call a broad term, we would call a tangent.

Q. That defines, does it not, in your understanding a precise tangent?

A. Well, in the teaching of this application, where it doesn't matter too much whether the bristle is down a few degrees or up a few degrees, why, we have used those words, so it would mean anything towards a tangent.

Q. Now, a precise, if you want to take the language itself, it is precise, but I think the teachings and the writing of the application that explain it all would be something to bear upon that type of language that I have read to you from your application—and I will repeat it again—"that the whiskers projecting at an angle from the sleeve simulating the trajectory of bodies thrown from the sleeve were the sleeve rotated rapidy" defines a precise and exact tangent, does it not?

A. That would be an exact tangent. [1524]

Q. And you are familiar with the fact that in the file wrapper, Exhibit BL, that that definition was agreed upon in one division of the Patent Office as so defining a precise and exact tangent, do you not?

A. I recall that your office or you called a tangent any sidewise degree. You have called a tangent a sidewise degree, and I remember after the Patent Office calling it, and after so long a time they finally

(Testimony of Jesse E. Hall, Sr.)

defined it down to an exact tangent, what a tangent is.

Q. And that exact tangent definition is found expressed in Division 27 of the Patent Office in that amendment filed on your behalf on June 19, 1945, and which consitutes paper No. 8 of Exhibit BL, and which followed an interview had in the Patent Office at which time it was agreed upon that what I have read to you defined an exact tangent so that the definition was not indefinite; that is true, isn't it?

A. After they defined it, the definition is not indefinite, but that is years later.

Q. And "years later" was in June 19 of 1945, was it not, as I will show you the date of the amendment of which I speak and which is a part of Exhibit BL? A. That is correct.

Q. And that June 19, 1945, was prior to the filing of the application which was later assigned the application serial number 627,013, which was not filed until November 8 [1525] 1945; isn't that true? A. The dates would be true, yes.

Q. Filed on November 6, 1945. Pardon me. I am two days off. Here is the certified file wrapper, Exhibit K, which gives the filing date as November 6, 1945. A. That is correct.

Q. After this application Serial No. 627,013 was filed, the Patent Office required what is known as an election, that is, as to which form of your scratcher that you desired to continue the prosecution, upon which you desired to continue the prose-

(Testimony of Jesse E. Hall, Sr.)

cution, and following that there was filed on your behalf in the Patent Office on June 30, 1947, an amendment in which you stated: "In the event no generic claim is allowed, applicant elects to prosecute specie claims covering structures shown in Figures 4 to 6, inclusive." And I am reading from page 21 in the file wrapper, Exhibit K, the second page of the amendment, dated by the Patent Office June 30, 1947, in the first paragraph; is that correct?

A. That is correct. But as far as what was going on in the Patent Office I didn't know. Mr. Scofield was prosecuting that and I don't attempt to prosecute the application in the Patent Office.

Q. At the time that amendment dated June 30, 1947, was filed in the Patent Office you signed a second oath to that application, which I place before you and which is [1526] constituted by pages 22 and 23 of Exhibit K, and which you swore to on the 30th day of May, 1947; isn't that correct?

A. That is correct. I signed that oath in May of 1947.

Q. In that oath you referred to the application which forms a part of Exhibit K and you also had that oath accompany that amendment which I have previously read, which constituted your election before the Patent Office of the close tolerance form of scratcher, did you not?

A. Well, that is my oath and that is the date of the amendment.

Mr. L. E. Lyon: I would like to have Exhibit 14, please, which is a letter dated July 13, 1944, to

(Testimony of Jesse E. Hall, Sr.)

"Dear Ben:" written by Jesse E. Hall and which was offered in evidence by the plaintiff on May 26, 1949.

Q. In this letter, Exhibit 14, Mr. Hall, which I place before you, I am reading from the first sentence of the second paragraph and I would like to have you explain what you mean by that sentence. This is a letter which you wrote to Ben McKinley, is it not?

A. Well, I don't know. Where is the original?

Mr. L. E. Lyon: Well, it is so offered by your counsel in evidence as that. Will you so stipulate it, Mr. Scofield?

Mr. Scofield: Yes, that is Exhibit 14.

Mr. L. E. Lyon: Just a minute. I want to read that.

Q. The first sentence being: "Regarding the patent [1527] situation between Kenneth Wright and myself I have the thing involved." What did you mean by that? [1528]

And in that same regard, you might tell me at the same time, what did you mean by the last two sentences, the last two sentences of that same paragraph, which read, "I am trying to get added. It looks like that I have everything involved that they have. If they should have a solemn thought now should be the time to make a deal with them."

Explain what you meant by those statements.

A. I meant that those interferences were involved and he had asked me if we could get together and make a settlement.

(Testimony of Jesse E. Hall, Sr.)

Mr. L. E. Lyon: What was the answer?

(Answer read by reporter.)

Q. (By Mr. L. E. Lyon): Now, who do you mean by "he"? A. Ben McKinley.

Q. What do you mean by "I have everything involved"?

A. I guess in an interference you would be involved, wouldn't you?

Q. And you had set out as set forth in this letter Exhibit 14 intentionally to involve everything that B & W had, is that what you meant?

A. Well, I meant everything that was in patent structure of that affair.

Q. Now, following this letter was the conference had at your solicitation, at Mr. Maxwell's office, at which time an effort was made to draw a contract which has now been declared [1529] to be no contract? Is that what next ensued in the chronological development of the story of this matter, Mr. Hall?

A. That was the next thing that ensued, was that contract which is now declared not to be a contract.

Mr. L. E. Lyon: I would like to quote for the record and have this stipulated to at this time, before I pass this letter, if the following is a correct statement of the rules of the United States Patent Office as of the time of this matter in controversy and that Rule 171 is correctly read and was the rule in force, which reads:

"An abandoned application is one in which all the essential parts have not been filed so that it

(Testimony of Jesse E. Hall, Sr.)

is completed and prepared for examination within a period of six months, or which the applicant has failed to prosecute within six months after any action therein of which notice has been duly given (see rules 31 and 77), or which the applicant has expressly abandoned by filing in the office a written declaration of abandonment, signed by himself and assignee, if any, identifying his application by title of invention, serial number, and date of filing."

Is that so stipulated, Mr. Scofield?

Mr. Scofield: Well, after that it says, "See rule 60" in [1530] parentheses.

Mr. L. E. Lyon: Yes.

Mr. Scofield: Now, this is read from Walker on Patents, of course.

Mr. L. E. Lyon: Which is Deller's Edition.

Mr. Scofield: Which is a textbook on patents. That is as to whether or not that particular rule was invoked at that time, that I could not say without referring to the rules of the Patent Office.

Mr. L. E. Lyon: Do you accept that stipulation subject to correction, if any is required?

Mr. Scofield: Yes, I will.

The Court: Very well.

Mr. Scofield: That is, the stipulation is that that rule was enforced in the Patent Office as Rule 171?

Mr. L. E. Lyon: That is right.

Mr. Scofield: At the date when this application was made.

Mr. L. E. Lyon: No. At the date when this ap-

(Testimony of Jesse E. Hall, Sr.)

plication No. 627,013 was abandoned by written abandonment.

Mr. Scofield: That is in what year?

Mr. L. E. Lyon: Well, I refer to Exhibit K and the written abandonment at that time was dated June 30th, 1949, as shown by page——

Mr. Scofield: What is the paper number?

Mr. L. E. Lyon: Paper No. 26 filed in the United States [1531] Patent Office as noted by the Patent Office stamp on July 5, 1949.

Q. I place before you Exhibit K, the paper which I have just referred to as the abandonment of that application. Is that your signature on this paper, Mr. Hall? A. Yes, sir.

Q. And by this paper I am referring to Paper No. 26 filed in the Patent Office July 5, 1949.

Now, at the time that abandonment was filed, was any effort made to get the assent of Wright or B & W to the abandonment of that application?

A. I couldn't tell you.

Mr. L. E. Lyon: Do you stipulate that no effort was made to get any consent of Wright or B & W to the abandonment of that application, Mr. Scofield?

Mr. Scofield: I don't think under the conditions that exist now here, where there was no contract, that there would be any effort necessary.

Mr. L. E. Lyon: Will you stipulate that there wasn't?

The Court: That there wasn't what?

Mr. L. E. Lyon: That there was not any effort

(Testimony of Jesse E. Hall, Sr.)

made to get Wright or B & W, or either of them, to agree to that abandonment?

Mr. Scofield: No. I think under the contract, Mr. Hall under specific paragraph was given the right to prosecute these [1532] applications by an attorney of his own selection and he was given carte blanche as far as the prosecution of the case was concerned and as I recall there was no attempt made.

Mr. L. E. Lyon: Then, your statement is that there was no attempt to get Wright or B & W to assent to that abandonment?

Mr. Scofield: No, I don't think there was. I don't think there was any necessity of it.

Mr. L. E. Lyon: We are not now arguing the question of necessity. I am asking for a simple stipulation.

The Court: You have made the stipulation, as I understand it now. Proceed.

Mr. L. E. Lyon: I did not get the court's statement. I did not hear it.

The Court: I say, you have made your stipulation, now, as I understand, in the record.

Mr. L. E. Lyon: Thank you.

The Court: So you may proceed.

Mr. L. E. Lyon: Pardon me. I would like to have Exhibit 17, Plaintiff's Exhibit 17. It is a letter from Gratma to Scofield; is it stipulated, Mr. Scofield, that as Exhibit 17 you received this letter in your office on August 16, 1946?

Mr. Scofield: Yes, sir. My date stamp is on the

(Testimony of Jesse E. Hall, Sr.)

letter. It seems that "16" has been written over the "15" but it was either the 15th or the 16th. [1533]

Mr. L. E. Lyon: It is stipulated that after you received that letter, you prepared in the Hall application No. 627,013 the paper which is paper No. 3-A entitled "Amendment Before Action," and forwarded same to the Patent Office for filing on August 19, 1946.

Mr. Scofield: What is the date of the paper?

Mr. L. E. Lyon: August 19, 1946.

Mr. Scofield: It was after the receipt of the letter.

Mr. L. E. Lyon: May I have Exhibit 69, please?

Q. I hand you Plaintiff's Exhibit 69, Mr. Hall, and refer you to page 11, the oath accompanying that application. I will ask you if that is your signature on that oath? A. It is.

Q. And you signed that oath on March 7, 1950?

A. Yes.

Q. Before a notary public, Virginia Burch?

A. That is correct.

Q. At Kansas City, Missouri?

A. That is right.

Q. In Mr. Scofield's office? A. Yes, sir.

Q. And in that oath you have set forth a list of purported foreign applications beginning with the notation that you have filed applications, in Mexico, serial No. 22,642 filed October 17, 1946; in Trinidad and Tobago, filed October 28, [1534] 1946, and issued into a patent No. 50 of 1946, dated

(Testimony of Jesse E. Hall, Sr.)

October 30, 1946; that you filed an application for a patent in Venezuela on December 9, 1946; in Brazil, serial No. 4339, filed July 15, 1947; in Colombia, filed July 18, 1947; in Peru, filed July 25, 1947; in Holland, no date given; in Canada, serial No. 578,479 filed August 23, 1948; and applications in Iraq and Iran.

That is a correct statement, is it?

A. As well as I recall it, yes.

Q. You took oath to that fact in March 7, 1950, did you? A. That is correct.

Q. Now, this application that you filed in Canada, did that correspond in precise detail with the disclosure and claims, drawings and specifications to the application serial No. 627,013 as filed?

A. I couldn't tell you.

Mr. L. E. Lyon: May we have a stipulation that it did, Mr. Scofield?

Mr. Scofield: I stipulate that the drawings and specifications are the same.

The claims are probably different in Canada than in these other countries.

Mr. L. E. Lyon: Well, I will ask that the applications be produced, then, if we cannot agree upon a stipulation. [1535]

It is my recollection that the claims were the same in Canada, Venezuela, Trinidad and Tobago.

Mr. Scofield: I think the Canadian cases probably are here.

Mr. L. E. Lyon: They were broader, much broader in Mexico.

(Testimony of Jesse E. Hall, Sr.)

Mr. Scofield: I don't think that I have the Mexican and Venezuelan. The Mexican patent is here. That is, the Mexican patent is, I think, marked and, if not, it is here. Maybe the Venezuelan patent is in evidence. I think you probably produced that.

Mr. L. E. Lyon: I think the Venezuelan is along with the Trinidad and Tobago patents.

Mr. Scofield: The others I don't have.

Q. (By Mr. L. E. Lyon): How long prior to August 23, 1948, the date of the filing of the Canadian application, had you personally been selling scratchers in Canada?

A. I couldn't answer that at the present time. I think it is of record in many places.

Q. Was it more than two years before that date?

A. I haven't the least idea at this time.

The Court: We will take a five-minute recess at this time.

(Recess.) [1536]

Q. (By Mr. L. E. Lyon): Referring back to Exhibit K, Mr. Hall, which is the file wrapper of the 627,013 application, the material which was added to this application and which was not common to your application Serial No. 388,891, as shown by Exhibit 1, is, first, the inside stud mounting, is it not? That inside stud mounting first appears in the 627,013 application and does not appear in the 388,891 application, does it?

A. That could be a material difference, yes.

Q. Now, the second thing that was added was a

(Testimony of Jesse E. Hall, Sr.)

close tolerance scratcher which was not shown in the 388,891 application; isn't that true?

A. A close tolerance——

Mr. Scofield: If your Honor please, these matters as to what were common to these applications have been argued at great length there in the Patent Office proceedings. I see no reason for—in fact, it is not the best evidence as to just what is common and what is not common in these applications.

The Court: Don't they speak for themselves?

Mr. L. E. Lyon: Only in one respect, your Honor. I am trying to get the witness' statement as to what was and what was not, and I believe it is preliminary, and I will show you why just as soon as I get that established, subject to a motion to strike if I do not. [1537]

The Court: He may answer. Objection overruled.

Q. (By Mr. L. E. Lyon): The second thing that is not common to the 388,891 application and which is found in the 627,013 application is a close tolerance scratcher, is it not?

A. Well, a specific type of a close-tolerance scratcher.

Q. Now, the third thing that was not common to the 388,891 application and which is first found in the 627,013 application is the so-called conical coil of the spring, is it not?

A. The conical coil that showed in the drawing there, limited to the conical type.

Q. You place no significance, I take it from your testimony here, in the fact that there is a difference

(Testimony of Jesse E. Hall, Sr.)
between tangent and a different form of sidewise direction shown in these two applications, 627,013 and 388,891, is that correct?

A. I have never placed any difference in any tangent.

Q. Okay.

A. I have always tried to find language, the attorneys have, to describe the sidewise bristle.

Q. Therefore, when you took the oath that you did on the 30th day of May, 1947, and where you swore:

"Deponent further says that as to all subject matter disclosed in this application Serial No. 627,-013, in addition to that of the said prior [1538] application Serial No. 388,891, he does not know and does not believe that the same was ever known or used before his invention or discovery thereof or patented or described in any printed publication in any country before his invention or discovery of, or more than one year prior to this application, or in public use or on sale in the United States for more than one year prior to this application, and that the same has not been patented in any country foreign to the United States on any application filed by himself or his legal representatives or assigns more than twelve months prior to this application, and that no application for patent on the same has been filed by himself or his legal representatives or assigns in any country foreign to the United States."

You were, when you took that oath, referring to

(Testimony of Jesse E. Hall, Sr.)

the three matters of added subject matter which you have just defined, is that correct?

A. No. I referred to——

Mr. Scofield: I object to that, your Honor. In the Patent Office this matter has all been discussed through all these proceedings. The question of what is common throughout these applications has been argued back and forth. That is, the Patent Office has consistently held that there is a continuity of invention throughout these three applications; [1539] that is, the sidewise bristle is carried from the first application to the third.

Now, to try and get the witness to specify that it is only one, two and three points of novelty is a matter that is entirely in conflict with what the papers themselves show.

I object to it.

The Court: The objection appears to be good.

Mr. L. E. Lyon: Well, the objection, your Honor, is not good because this particular matter here on this particular oath, the Patent Office has referred to in its latest decision and has issued an order to show cause to this witness to discuss why this particular patent, because of this oath, should not be stricken from the files of the Patent Office; and that matter is now before the Patent Office.

The Court: And as to the business of similarity or dissimilarity between different claims, the document speaks for itself, doesn't it?

Mr. L. E. Lyon: And I am asking him if those were the points that he referred to at the time that

(Testimony of Jesse E. Hall, Sr.)
he took this particular oath, and you will note that the oath starts out as saying that "as to all subject matter disclosed in this application Serial No. 627,-013, in addition to that of the said prior application," he then takes oath that none of that additional matter had been on sale or in public use more than a year before November 6, 1945. [1540]

The Court: Yes. And what is your question?

Mr. L. E. Lyon: My question is: The matter of difference that he has just pointed out, the three matters of difference of the inside stud, the close tolerance and conical coil, the matters that he referred to when he took that oath on May 30th, 1947.

The Court: The oath refers to a prior application. That prior application is here, isn't it?

Mr. L. E. Lyon: Yes, your Honor.

The Court: And doesn't it speak for itself?

Mr. L. E. Lyon: It does in that respect.

The Court: Whether he had something else in mind, would that be material?

Mr. L. E. Lyon: It would only be material if they tried to use that as a way of saying that that is not what he was swearing to. He is foreclosed from taking such a position.

The Court: He is bound, presumably, on the face of it by the words of what he swore, isn't he? If he wishes to explain it away in some fashion and say he did not read it, he did not intend it, or offer some such excuse as that, of course, is another matter. But, as I understand your question, you are asking him to say what is in the document.

(Testimony of Jesse E. Hall, Sr.)

Mr. L. E. Lyon: No. I am asking him to say if those particular differences that he has pointed out are the [1541] differences that he took oath to in that portion of that oath.

The Court: He took oath to certain writings, didn't he, the truth of certain writing, and the writings presumably speak for themselves.

Mr. L. E. Lyon: He took oath to a differential oath, your Honor. First, it says: "In addition." Now, I have got him to define what he understood was "in addition."

Now I have asked him if that is what he meant by that portion of his oath as to that what was in addition, and that is the substance of my question.

The Court: You may ask him if that is what he had in mind, of course, or meant by what he took oath to. The writing itself is the best evidence of what he took oath to.

Mr. L. E. Lyon: Well, that is correct. I am asking him if what he has defined here as being the "in addition" is what he had in mind when he took this oath on May 30th of 1947.

The Court: You are not asking him if that is all he had in mind, but if that is among the things he had in mind.

Mr. L. E. Lyon: Yes.

The Court: Overruled. He may answer.

A. I don't recall at this time what I had in mind by taking an oath for. I taken the oath for whatever the papers, the documents show was the subject matter for the oath.

(Testimony of Jesse E. Hall, Sr.)

Q. (By Mr. L. E. Lyon): Will you state anything other than you have pointed out in this examination that you had [1542] in mind at the time you took that oath on May 30 of 1947?

Mr. Scofield: I think that is immaterial, your Honor, as to what other things he might have had in mind. The oath speaks for itself and those documents include such things as he took oath to. And I might point out here——

The Court: Sustained. That is enough.

The Witness: I would like to at this time correct the date on this CT. This was handed to me and I looked at the front page and recognized that, but there is 19 pages in here, after I opened it, and this describes some things that happened in 1946. And my best recollection that this was prepared in 1947, by using part of my material, by one Roland Smith here in the presence and John Hall, prepared this document CT.

Q. (By Mr. L. E. Lyon): Was that a document sent out at that time under your signature in response to that ad?

A. This has 19 pages in it.

Q. I am talking about the whole 19 pages.

A. When it was handed to me, I thought it was only a one or two-page thing folded up. After I look in it, it has matters in it that didn't happen until after 1946 and possibly after 1947.

Q. That was written by you, under your signature and sent out to the trade, is that correct?

A. I don't know if this was sent out, this 19

(Testimony of Jesse E. Hall, Sr.)

pages. I don't recall of ever seeing over one or two, or probably [1543] the original of that. I don't believe I ever saw that sent out. It was given to one or two of the men. It is a long thing, describing various operations. It would take you a day to study what it is all about. I see now why it was hard to get out of this cellophane paper.

Q. Would you say, Mr. Hall, that that entire document was not sent by you to the Humble Oil & Refining Company engineering department in response to their request for your Index to Well Completions as the same was advertised by you?

Mr. Scofield: What date?

Mr. L. E. Lyon: I don't care about the date.

Mr. Scofield: Well, the question is before us with respect to BA, which is dated December 13, 1943.

Mr. L. E. Lyon: That holding out of that Index to Well Completions, as I understood your testimony, went to the time you quit business. Will you say that this exhibit which you have in your hand was not sent to the Humble Oil & Refining Company engineering division in response to a letter of inquiry to you for your paper on Index to Well Completions?

A. I will say I would recommend to send it to them. It is a good letter. But there were things happened in that that didn't happen until after '46. That is the point I am trying to drive at.

Q. You recognize this, then, as a copy of the

(Testimony of Jesse E. Hall, Sr.)

Index to Well Completions that you sent out, but not until after [1544] 1946, is that correct?

A. I will say, as an improvement to some of the original ones that I sent out. I've been sending them out all these years, but this happened to be one of the first ones.

Mr. L. E. Lyon: The document we are referring to there is Exhibit CT on this examination, and the witness made the voluntary statement to correct the evidence.

Q. Now, do you have and are you able to produce at any time now the paper entitled "Index to Well Completions" that you first sent out and as set forth in your advertisment of 1943, Exhibit BA, and which is entitled there "Index to Well Completions" in quotation marks?

A. This is the first one that was sent out.

Q. Is that paper which you have in your hand entitled in quotations "Index to Well Completions"?

A. As I told you, that there was——

Q. Just answer the question, please.

A. No, it is not.

Mr. L. E. Lyon: All right. This paper that you have been handling here I will ask be marked for identification at the present time.

The Court: As Defendants' next exhibit?

Mr. L. E. Lyon: It would be CW. This is the paper heretofore identified as Exhibit R in the 819-BH case in the United States District Court for the Central District of [1545] California, Central Division.

(Testimony of Jesse E. Hall, Sr.)

The Court: "819"?

Mr. L. E. Lyon: 8191.

The Court: 8191. That was the case before Judge Harrison about which the defendant testified?

Mr. L. E. Lyon: Yes, your Honor.

Q. Exhibit CW is a paper which you yourself wrote and sent out to the trade?

A. That is correct.

Mr. L. E. Lyon: I will ask that that document, Exhibit CW, be received in evidence.

Mr. Scofield: No objection.

The Court: Received in evidence.

(The document referred to, and marked Defendants' Exhibit CW, was received in evidence.)

Q. (By Mr. L. E. Lyon): Have you any copy, Mr. Hall—and I am not asking about something else—of a paper entitled "Index to Well Completions" that you sent out at any time between the date of Exhibit BA and December 13, 1943, and the time you ceased doing business yourself on December 15, 1948? A. None that I know of.

Mr. L. E. Lyon: I will ask if I may have Exhibit FFF.

While you are endeavoring to locate FFF, I will hand the witness another copy of it, a photostatic copy of it. [1546]

Q. I hand you Exhibit FFF and will ask you if this is a catalogue which you circulated to the trade, Mr. Hall?

(Testimony of Jesse E. Hall, Sr.)

A. Will you hand it to me now?

Q. Yes. [1547]

I will give you the original of this for the photostat so that you will not worry about the photostat.

A. This is the catalog that was circulated to the trade by me.

Q. When? A. Well, prior to 1948.

Q. Isn't that catalog dated as February 1, 1947?

A. Well, I do not see the date on it. If you will be kind enough to point it out to me, I will be glad to——

Q. I do not offhand see such date at the present time, but it is my recollection that it was either testified to by you or dated February 1, 1947.

A. I will state that this catalog——

Q. And that it appeared in the February 10th issue of one of the trade publications, in its entirety, that being the February 10, 1947, issue of the Oil Weekly, one page of which I hand to you, Mr. Hall, and ask you to make a comparison, and if that does not recall your mind to the fact of the date of the publication of this particular catalog?

A. I remember of having it published. I just didn't remember the date.

Q. Well, it was published by you before it appeared in the magazine, was it not?

A. No, sir.

Q. Well, was it published on the same [1548] date?

A. No. It was published at about the same time, by the same people that published it in the magazine. This is what they call a rerun from the ad.

(Testimony of Jesse E. Hall, Sr.)

Q. All right. Then the proper publication date of Exhibit FFF for identification is February 10, 1947, is that correct?

A. That is correct. It could have been a little after that, or probably a month or so.

Q. All right. On page 2 of that catalog, Exhibit FFF for identification, there is a picture of a scratcher, and underneath that scratcher is the notation, "Patent No. 2,374,317." That is the Wright patent in suit, Exhibit 38, is it not?

A. That is right. That was occasioned by that contract.

Q. Now, I hand you, just for the purpose of establishing the fact of publication in the Oil Weekly, pages 190 and 189 of the Oil Weekly of February 10, 1947, and will ask you if you can identify those and if that is a true copy of the publication of those pages of the Oil Weekly of February 10, 1947?

Mr. Scofield: Exhibit number?

Mr. L. E. Lyon: No exhibit number.

Mr. Scofield: Does this have an exhibit number?

Mr. L. E. Lyon: This does not separately have an exhibit number.

A. This is a copy.

Q. (By Mr. L. E. Lyon): A correct [1549] copy?

A. Well, as far as I know, it is a correct copy. It is pretty well worn. It is a copy of it.

Q. And it was published at that time in the Oil Weekly?

(Testimony of Jesse E. Hall, Sr.)

A. That is what it says, and I used them for publication.

Mr. L. E. Lyon: I will ask that the catalog heretofore identified as Exhibit FFF be received in evidence as Exhibit FFF and that the pages, 189 and 190, page 190 of which corresponds to page 2 of the catalog, FFF, be received as Defendants' Exhibit FFF-1, your Honor.

The Court: Is there objection to the offer?

Mr. Scofield: I would like to take a look at it.

Mr. L. E. Lyon: Pardon me.

The Court: It is received in evidence as Exhibits FFF and FFF-1.

(The documents referred to, marked Defendants' Exhibits FFF and FFF-1, were received in evidence.)

Mr. Scofield: Well, it is not the same thing, your Honor.

The Court: It is a matter of comparison, isn't it? It is a matter of argument.

Mr. Scofield: Yes.

Mr. L. E. Lyon: Comparison as far as the two photographs are concerned?

Mr. Scofield: No. They are reversed.

Mr. L. E. Lyon: Pardon me. One is from the other side [1550] of the film?

Mr. Scofield: Well, that is not the same.

The Court: That is a matter of argument.

Mr. Scofield: I certainly am not going to stipulate if they aren't the same.

(Testimony of Jesse E. Hall, Sr.)

The Court: The witness has identified them, as I understand the testimony.

Mr. L. E. Lyon: And this is the same catalog.

The Court: Let us proceed, gentlemen. We will finish with this witness today, I hope.

Q. (By Mr. L. E. Lyon): You distributed those catalogs, Exhibit FFF, did you not, in an oil show, Mr. Hall?

A. I don't recall. I distributed them to the trade. [1551]

Mr. L. E. Lyon: In order to complete the chronological record at this time I would like to offer in evidence Exhibit Five J, which has been renumbered.

The Court: Have you finished with my list, Mr. Scofield?

Mr. Scofield: Yes, sir. I returned it this morning.

The Court: I have not seen it.

Mr. Scofield: I gave it back to the clerk.

Mr. R. F. Lyon: Exhibit A-1.

Mr. L. E. Lyon: Exhibit A-1. May I have Exhibit A-1?

The Court: Mr. Clerk, do you have my copy of defendants' list of exhibits, 86-2 for identification?

Mr. L. E. Lyon: A-1 instead of A-I, it would be.

The Court: Have you any objection to the offer of Exhibit A-1 for identification in evidence?

Mr. Scofield: No objection to it.

The Court: It is stipulated to be a true copy of what it purports to be?

(Testimony of Jesse E. Hall, Sr.)

It is stipulated to be a true copy of what it purports to be?

Mr. Scofield: Yes, sir.

The Court: It should not be necessary for me to have to go to all of that effort, gentlemen.

Mr. Scofield: Well, I stipulated, your Honor.

(The document referred to was received in evidence and marked as Defendants' Exhibit A-1.) [1552]

Mr. L. E. Lyon: I would like to have Exhibit A-I. It is a letter from the United States Patent Office to Mr. Hales advising of the abandonment of the No. 388,891 application. I will give you a copy of it and you can find it.

The Clerk: Here it is.

Mr. L. E. Lyon: That is it.

The Court: The clerk has now handed to me a copy of Plaintiff's Exhibit 86-2, which you returned, Mr. Scofield.

Mr. L. E. Lyon: I would like to have exhibits for identification III, XXX, YYY, HHH, ZZZ, WWW, and JJJ. These letters, your Honor, are a series of letters written by Mr. Scofield, which are not signed copies, which I will ask that he acknowledge as being true and exact copies of the letters which he sent, first, Exhibit HHH to The Texas Company on July 28, 1950, in which he notified them that the use of B and W of Nu-Coil and Multiflex scratchers was an infringement of the Wright patent No. 2,374,317.

The Court: Let us just identify the letter, first.

(Testimony of Jesse E. Hall, Sr.)

The letters will speak for themselves.

Do you stipulate, Mr. Scofield?

Mr. Scofield: Yes, sir, I stipulate that that is a letter that I sent to The Texas Company.

The Court: Do you offer it in evidence?

Mr. L. E. Lyon: I offer Exhibit HHH in evidence.

The Court: It is received in evidence. [1553]

(The document referred to was received in evidence and marked as Defendants' Exhibit HHH.)

Mr. Scofield: Well, your Honor, I object to the offer in evidence because if that letter constitutes unfair competition, it is barred by the statute.

The Court: A letter of what date?

Mr. Scofield: 1950.

The Court: Objection overruled.

Mr. Scofield: We have pleaded it, your Honor.

Mr. L. E. Lyon: I will ask the same question with respect to Exhibit III, being a further letter to Mr. W. M. Stratford of The Texas Company, the exhibit being dated July 28, 1950. Is that a true copy of the letter that you wrote at that time?

Mr. Scofield: That is a true copy of the letter that I wrote at that time.

Mr. L. E. Lyon: I offer Exhibit III in evidence as Defendants' Exhibit III.

Mr. Scofield: The same objection, your Honor, that it is barred by the statute.

The Court: Objection overruled. It is received in evidence.

(Testimony of Jesse E. Hall, Sr.)

(The document referred to was received in evidence and marked as Defendants' Exhibit III.)

Mr. L. E. Lyon: I have a further letter addressed to Mr. [1554] George D. Fiser, the Union Producing Company, identified as Exhibit WWW for identification written July 28, 1950, and purported to be signed by Mr. Thomas E. Scofield and as having been sent by registered mail. Is that a true and exact copy of the letter which you sent by registered mail at that time?

Mr. Scofield: That is a copy of a letter that I wrote to Mr. Fiser on or about that date.

Mr. L. E. Lyon: And it was sent by registered mail?

Mr. Scofield: I assume it was. I guess so, if you say it was. It does not appear on its face, does it, to have been sent by registered mail? There is a memo on the lower left-hand corner, "registered mail," so it was probably sent by registered mail.

The Court: Do you stipulate or not?

Mr. Scofield: Yes, I will stipulate.

Mr. L. E. Lyon: I will offer the document, so stipulated to, Exhibit WWW, in evidence as Exhibit WWW.

Mr. Scofield: The same objection, your Honor, that it is barred by the statute.

The Court: Objection overruled. It is received in evidence.

(The document referred to was received in

(Testimony of Jesse E. Hall, Sr.)

evidence and marked as Defendants' Exhibit WWW.)

Mr. L. E. Lyon: I hand you a further document, Mr. Scofield, [1555] also dated July 28, 1950, to Mr. George D. Fiser, Union Producing Company, and purportedly signed by you, and ask you if you stipulate that is a true and exact copy of a letter that you sent to that addressee at that time, Exhibit XXX?

Mr. Scofield: Yes, I sent this letter on the date that the letter is dated, and I make the same objection to the offer.

Mr. L. E. Lyon: I offer the letter in evidence as Defendants' Exhibit XXX.

The Court: Objection overruled. It is received in evidence.

(The document referred to was received in evidence and marked as Defendants' Exhibit XXX.)

Mr. L. E. Lyon: I hand you a copy of a letter, Mr. Scofield, Exhibit YYY for identification, that was addressed to you on August 3, 1950, by the Union Producing Company, and will ask you if that is a true and exact copy of the letter which you received at that time from the Union Producing Company. [1556]

Mr. Scofield: That is a copy of the letter I received from the Union Producing Company on or about the date that appears on the letter.

The Court: Do you offer it?

(Testimony of Jesse E. Hall, Sr.)

Mr. L. E. Lyon: I offer Exhibit YYY in evidence as Exhibit YYY.

Mr. Scofield: The same objection, your Honor. This is barred by the statute.

The Court: Overruled. Received in evidence.

(The document referred to, and marked Defendants' Exhibit YYY, was received in evidence.)

Mr. L. E. Lyon: I hand you a further letter, Mr. Scofield, identified as Exhibit ZZZ for identification, dated August 8, 1950, and purportedly written by you to Mr. George D. Fiser, Union Producing Company, Shreveport 92, Louisiana. I will ask you if that is a true and correct copy of the letter that you wrote to Mr. Fiser on that date and mailed to him on that date?

Mr. Scofield: Yes, it appears to be a copy of the letter that I wrote to Mr. George Fiser on or about August 8, 1950.

Mr. L. E. Lyon: I will offer in evidence document heretofore identified as Exhibit ZZZ for identification as Exhibit ZZZ, and ask that it be so marked.

Mr. Scofield: If this letter, your Honor, is being relied upon as a charge of unfair competition, it is barred [1557] by the statute. I object to it for that reason.

The Court: Overruled. Received in evidence.

(The document referred to, and marked Defendants' Exhibit ZZZ, was received in evidence.)

(Testimony of Jesse E. Hall, Sr.)

Mr. L. E. Lyon: I would like to have a statement at the present time from plaintiff's counsel as to whether he now asserts that the Nu-Coil and Multiflex scratchers constitute an infringement of the Wright '317 patent in evidence, or if he asserts——

Mr. Scofield: I can't hear you, Mr. Lyon. I can't hear you.

Mr. L. E. Lyon: ——as he does in the Answer, that the Nu-Coil and Multiflex scratchers are not covered by the '317 patent. The positions are entirely inconsistent.

Mr. Scofield: Would you read the statement of counsel?

(Counsel's statement read by the reporter.)

Mr. Scofield: I make no assertion, your Honor, at this time, because it is not up to me to assert whether or not Multiflex and the Nu-Coil are an infringement of the Wright patents.

The Court: The Wright patent referred to, I take it, is Exhibit 38?

Mr. L. E. Lyon: Yes, your Honor.

The Court: Did you so understand it?

Mr. Scofield: Yes, sir; I so understand it. [1558]

The Court: Very well, let us proceed.

Mr. L. E. Lyon: May I have the exhibits just marked?

Q. At the time these letters were written July 28, 1950, Mr. Hall, was it your belief that the Nu-Coil and Multiflex scratchers were covered by the Wright patent No. 2,374,317, Exhibit 38?

(Testimony of Jesse E. Hall, Sr.)

The Court: Which letters are you referring to?

Mr. L. E. Lyon: I am referring to Exhibits III, HHH, WWW, XXX, YYY, and ZZZ, your Honor.

Mr. Scofield: Read the question, please.

(The reporter read the question as follows: "At the time these letters were written in July 28, 1950"——)

Mr. L. E. Lyon: ——or thereabouts. They were not all written on that date. Some of them were not written until August 8th.

(Reporter completes reading the question.)

Mr. Scofield: Object to the question, your Honor, as that now is entirely immaterial to the case here since the contract has been cancelled. At that time we had under the contract, as you know, the right to sue under the Wright patent. The contract has now been done away with and that becomes an academic question.

Mr. L. E. Lyon: Your Honor, we find ourselves in this position in this case, of the plaintiff here making one [1559] assertion to the court that these patents are invalid and do not cover these particular structures, and that is in their pleadings here, and asserting to the trade that they could sue the trade for purchasing the precise and exact structures under the patents which they must hold out to be both valid and infringed in making those representations to the trade and here in this court, at the same time, asserting the exact contrary.

Now, both from an ethical and standpoint of fair

(Testimony of Jesse E. Hall, Sr.)

play and disbelief, they have got to take one position or the other; and they can't assert to the trade, in order to interfere with the defendants' business, one thing and in this court assert an entirely different one at the same time.

The Court: I take it that is one of your claims of unfair competition?

Mr. L. E. Lyon: That is precisely, very much the bottom of our claim of unfair competition.

The Court: Is it material what this witness thought about it?

Mr. L. E. Lyon: It is material very much whether he believed the assertions in those letters or not at the time they were sent out.

The Court: Why don't you ask?

Mr. L. E. Lyon: That is what I did just ask him.

The Court: You are putting your own interpretation upon [1560] the letters.

Mr. L. E. Lyon: All right.

The Court: Just ask him to examine the exhibits and ask him if that represents his beliefs in the matter.

Q. (By Mr. L. E. Lyon): Did these exhibits, HH, II, XX, YY——

The Court: You want to triple those letters.

Mr. L. E. Lyon: All three of the triple letters which I have handed you, as of the dates they are written, express your beliefs with reference to the facts, Mr. Hall, and WWW?

The Court: Have you read them, Mr. Hall?

The Witness: I have read one of them.

(Testimony of Jesse E. Hall, Sr.)

The Court: The question is: Did you authorize them, as I understand it, and did those letters express your views? Is that your question, Mr. Lyon?

Mr. L. E. Lyon: Yes, your Honor. I did not add the "authorization" because I presumed that. I believe there is a presumption.

The Court: Yes; presumably they were authorized.

Mr. L. E. Lyon: They were authorized.

The Witness: My opinion was then, and it is now, that the Multiflex and the Nu-Coil installed the teachings of the B & W apparatus patent 2,374,317.

The Court: Exhibit 38?

The Witness: Exhibit 38. They would [1561] infringe.

The Court: Infringe that patent?

The Witness: If they were installed to the teaching of this patent.

The Court: In other words, if you took the Nu-Coil scratcher or the Multiflex——

The Witness: Or take any scratcher.

The Court: ——and follow the teachings of the patent, Exhibit 38, the Wright patent, that these devices, that is, the Nu-Coil or the Multiflex would infringe?

The Witness: And this one, too; all of them.

The Court: Which is "this one, too"?

The Witness: This is one of the exhibits.

The Court: Give us the exhibit number.

The Witness: Exhibit CV-1.

(Testimony of Jesse E. Hall, Sr.)

Q. (By Mr. L. E. Lyon): Then, your answer is that these letters did express your beliefs then at the dates that they were written and now, is that correct?

A. That is true if you follow the teachings of the patent.

Q. And it was your belief that the users, the Texas Company, the Union Sulphur, and I believe the Sun Oil Company—maybe not the Sun—let us see who the addressees are, again—were at that time following the precise teachings of the Wright patent No. 2,374,317, Exhibit 38?

The Court: Is that the process? [1562]

Mr. L. E. Lyon: No; that is the apparatus patent.

The Court: That is the apparatus patent?

Mr. L. E. Lyon: Yes, sir.

A. That is secured to the pipe rigidly so it can't turn nor it can't reciprocate.

The Court: Your answer would be "yes" to the question just put?

The Witness: My answer, they could have been infringing. I don't know at this time what they were doing.

Q. (By Mr. L. E. Lyon): Did you know in July 28, 1950, what they were doing?

A. No, I didn't; only I knew they were using the scratchers.

Q. Did you have any idea as to the way in which the scratchers were being used, that is, the Nu-Coil and Multiflex scratchers?

(Testimony of Jesse E. Hall, Sr.)

A. No; only I have seen scratchers used both ways.

Q. Did you ever see a Multiflex scratcher mounted on a pipe in any way other than between lugs so that it was free to rotate on the casing?

A. I don't think that I have ever seen a Multiflex scratcher mounted on the pipe. I have seen a many of them in the boxes, but I have never went out to none of the jobs and watched them put them in the holes.

Q. Did you ever see a Nu-Coil scratcher mounted on [1563] a pipe or a casing in any way other than where it was free to rotate and being mounted between top and bottom lugs so that it might slide on the pipe between the lugs as well as rotate?

A. I never recall of ever seeing a Nu-Coil scratcher installed on the pipe.

Q. Then your statement as I now take it is that if these companies, that is, the Texas Company and the Union Producing Company, mounted either of these scratchers on a pipe so that they were not free to turn, that in your opinion they would be infringing the Wright patent, No. '317, Exhibit 38—and those are the last three figures of the patent—is that correct?

A. That is correct, if they were mounted on there secured to the pipe to where they would rotate with the pipe and would not reciprocate. And as long as you people were making them and that is the teaching of the patent and they claimed the

(Testimony of Jesse E. Hall, Sr.)

patent covered everything, I presume that they were instructed to comply with the patent.

Q. But, however, you never saw either scratcher so mounted at any time by anybody, did you?

A. Yes, I have mounted scratchers secured to the pipe.

Q. Is that what you mean in your catalog where you put the patent numbers, this very patent number under the picture of your scratcher, that it would be covered by that [1564] patent if it were mounted rigidly on the casing, Mr. Hall?

A. If it come under the scope of the patent, if they used it that way; and at one time I used a lot of these scratchers rigidly applied to the pipe.

Q. Will you point out there in Exhibits FFF or FFF-1 any place in that catalog where there is any statement of any kind with reference to rigidly mounting the scratcher shown in the figure or photograph under which you have the Wright patent, the '317 patent, Exhibit 38, shown, that that scratcher should be mounted rigidly on the casing?

A. Before the complaints were made in '47——

Q. Just answer the question, please.

A. Well, I am trying to answer your question if you will bear with me. I mounted scratchers rigidly to the pipe. We had a belief that it would help the casing and electrolysis, and that was one of the reasons that I made the contract with B & W. At that time I was selling lots of scratchers to the Schlumberger on account of electrodes, and we felt that that was one of the ways to get shut of it. But later on it didn't do so well.

(Testimony of Jesse E. Hall, Sr.)

Q. Will you point out now, Mr. Hall, in that catalog, Exhibits FFF-1 or FFF at any point where you make any reference to mounting a scratcher rigidly on a pipe?

A. These catalogs were made after the date that I was pushing the idea of welding the scratchers to the casing. [1565]

Q. And these catalogs were published after the date when you knew that no such rigid mounting would work; is that your testimony?

A. Well, I don't know as I say it won't work today. It didn't take to the trade too well after so long a time. There is still a few customers today using them rigidly mounted.

Q. Your answer, then, is that you cannot point out from this catalog, Exhibits FFF-1 or FFF, any place in that catalog where there is any teaching of any kind that a scratcher should be rigidly mounted on a pipe so that it would not rotate, is that correct?

A. Not in this catalog, no.

Q. By "this catalog," you mean Exhibits FFF and FFF-1?

A. FFF and FFF—no, I don't see it on this one.

The Court: Will it be stipulated the witness refers to Exhibits FFF and FFF-1?

Mr. Scofield: I don't believe that second one is marked, your Honor.

The Witness: It ain't marked.

Mr. Scofield: I don't know what marking that is.

Mr. L. E. Lyon: It was supposed to be marked by the clerk and was received.

(Testimony of Jesse E. Hall, Sr.)

The Court: It is in evidence as FFF-1.

Mr. L. E. Lyon: It has not been marked [1566] yet.

Mr. Scofield: If it has, I will stipulate. I didn't understand that it had been marked.

The Court: Mr. Clerk, will you mark that Exhibit FFF-1, please, in evidence?

The Witness: There is catalogs in evidence or advertising in evidence where it specifically tells you to weld it to the pipe.

The Court: Have you about completed your examination?

Mr. L. E. Lyon: No, your Honor. I have considerable more to take up with this witness.

The Court: Of course, this is one of those things. I just assume we could sit here for six weeks. There has to be some limitation. It is like a review of some Encyclopedia Britannica or something like that. It depends on how much detail you want to get into.

Mr. L. E. Lyon: That is absolutely correct. I want to get only the major points from this witness, your Honor, and there are quite a few others.

The Court: Quite a few others what?

Mr. L. E. Lyon: Of that character, that same character, that we have now been working on this afternoon.

The Court: Some of that is just a matter of opinion. It is like having an expert, a so-called expert. It is really a matter of argument.

I do not wish to limit you unduly. How much longer will [1567] your case be, Mr. Scofield?

(Testimony of Jesse E. Hall, Sr.)

Mr. Scofield: After the redirect of this witness I just have two witnesses on the sales, and they will be but little longer than Mr. Drury was this morning; that is, there are more documents to cover but I think it could be done in a day.

The Court: Well, we may as well stay tonight, gentlemen. I am going to finish the plaintiff's case, if I can, before Thanksgiving. I do not know what we will do with it after Thanksgiving. We may go over until next summer. I expect to expend most of the rest of my days trying this case the way it looks now.

Would you rather work tonight or tomorrow night?

Mr. L. E. Lyon: It doesn't make a bit of difference to me, your Honor, at your Honor's convenience.

Mr. Scofield: I am agreeable any time, either tonight or tomorrow, whatever you say.

The Court: Do you think we would save any time by taking these other witnesses out of order and disposing of them, and just spend the rest of the time between now and the time we adjourn for Thanksgiving with Mr. Hall?

Mr. L. E. Lyon: It doesn't make any difference to me. If it will save time, I am agreeable to it.

Mr. Scofield: I am prefectly willing to take them out of order. I don't know whether it will save any time. If [1567] it will, I am agreeable to take them out of order any time.

The Court: Mr. Lyon estimated this morning

(Testimony of Jesse E. Hall, Sr.)

that he would be through with Mr. Hall by this time. I appreciate it is not easy to make those estimates. Your estimate this morning was it would take most of the day with Mr. Hall.

Mr. L. E. Lyon: And probably part of tomorrow, your Honor, I said, I think.

The Court: I am not holding you to it. I appreciate those matters are not easy.

There is so much here in the way of documentary evidence that the witnesses cannot add to and they cannot vary.

Mr. L. E. Lyon: It takes so much time, however, to get them in evidence, your Honor.

The Court: I do not wish to put you to extra hours unless we can accomplish something by it. Can we finish your case by tomorrow night if we hold a night session, Mr. Scofield?

Mr. Scofield: If we work tonight?

The Court: Yes.

Mr. Scofield: Yes, I think we can finish by tomorrow evening. It is according to how long the cross-examination is. That is, as far as I am concerned, I could certainly get the——

The Court: Perhaps for the reporters, if we have to hold a night session, we had better hold it tomorrow night and then they can get out their transcript Friday. [1568]

Mr. Scofield: Very well.

The Court: How long do you estimate your case will take, Mr. Lyon?

Mr. L. E. Lyon: I can say that it will probably

(Testimony of Jesse E. Hall, Sr.)

Mr. Scofield: Yes.

The Court: We still do not have to sit here and endure this laborious thing of going through and identifying every one of them.

Mr. Scofield: I will do that.

The Court: You still may say, "I stipulate that is a true copy of the letter but I will object to its admissibility in evidence."

Mr. Scofield: That I will do.

The Court: Very well. Why don't you gentlemen do it and shorten it?

Mr. Scofield: Very well. I will get together with Mr. Lyon on that. I have been co-operative [1571] so far.

The Court: What do you intend to offer on this witness, Mr. Lyon? Let us get it now.

Mr. L. E. Lyon: Your Honor, there has been a certain amount of examination on direct that I haven't even touched upon so far as that is concerned.

The Court: I am speaking of the documentary evidence. What documentary evidence do you expect to offer through this witness?

Mr. L. E. Lyon: I think I have pretty well covered the documentary evidence. Let me see the list of exhibits and then I can probably identify such further ones that are necessary.

I notice in going through the list the Weatherford Spring catalog, published 2-1-1947, is in evidence as Exhibit L already.

The Court: That is the exhibit which was introduced as Exhibit FFF?

(Testimony of Jesse E. Hall, Sr.)

Mr. L. E. Lyon: Yes, your Honor. It was offered on June 1, 1949, as Exhibit L, according to Mr. Scofield's list.

The Court: We have two exhibits then, I assume. For the sake of the record, will you, Mr. Clerk, mark on the identification of Exhibit L, "The same as Exhibit FFF," and on Exhibit FFF the identifying label, marking it, "The same as Exhibit L"? Is that agreeable, gentlemen?

Mr. Scofield: It is agreeable to me. [1572]

Mr. L. E. Lyon: Now, there are Exhibits M, N, O, the Venezuelan patent and the Trinidad and Tobago patents, which are a part of Exhibit O and referred to as English translation in Mr. Scofield's list.

Then there is a publication of notice on the Caracas suit.

Mr. Scofield: What exhibit number?

Mr. L. E. Lyon: These are P, M, N, O.

Then the original statement of claim in the matter of the Canadian patents, Exhibit Q.

The Wright patents, Exhibits Q-1 and Q-2, I believe you have already offered.

Then there is Exhibit R. I believe that, however, was testified to by Mr. Peterson. If it was not offered in evidence, it will be.

The Court: Is there any objection to Exhibit R being received in evidence?

Mr. Scofield: No objection.

The Court: It is received in evidence.

(The document referred to, marked Defendants' Exhibit R, was received in evidence.)

(Testimony of Jesse E. Hall, Sr.)

Mr. R. E. Lyon: There is Exhibit T, which is a decision of the Commissioner of Patents, of June 14, 1951.

The Court: Let us go back to Exhibit M now. Is there any objection to that Venezuelan newspaper article? [1573]

Mr. Scofield: No objection.

The Court: Is it stipulated to be a true copy of what it purports to be?

Mr. Scofield: Yes, sir.

The Court: Do you offer it?

Mr. L. E. Lyon: I offer it.

The Court: It is received in evidence.

(The document referred to, marked Defendants' Exhibit M, was received in evidence.)

The Court: Exhibit N. Is it stipulated to be a true copy of what it purports to be, complaint filed by Hall in the Caracas, Venezuela, litigation against Wright and B & W?

Mr. Scofield: Yes, sir. I recall that that was.

The Court: Is it so stipulated?

Mr. Scofield: It is so stipulated.

The Court: Do you offer it?

Mr. L. E. Lyon: I offer it in evidence.

The Court: It is received in evidence as Exhibit N.

(The document referred to, marked Defendants' Exhibit N, was received in evidence.)

The Court: Exhibit O, Hall Venezuelan Patent

(Testimony of Jesse E. Hall, Sr.)

No. 3722 and English translation. Is it stipulated to be a true copy and a correct translation?

Mr. Scofield: Yes, I will stipulate, so stipulate.

The Court: Do you offer it? [1574]

Mr. L. E. Lyon: I offer it in evidence.

The Court: It is received as Exhibit O.

(The document referred to, marked Defendants' Exhibit O, was received in evidence.)

The Court: Exhibit P, publication notice of Caracas suit—Spanish and English. I assume the English is the translation.

Is it stipulated to be true copies, and that the English translation is a true and correct translation of the Spanish into the English? [1575]

Mr. Scofield: I might add that it is just merely a publication notice.

Mr. L. E. Lyon: That is a notice by which jurisdiction was obtained and I will show what proposition it had, because there is one other stipulation that I want with reference to these Venezuelan cases.

The Court: Do you stipulate as to Exhibit P?

Mr. Scofield: If that is the one where we got jurisdiction, I stipulate to it.

The Court: I don't know whether it is. Do you stipulate as to Exhibit P? That the document or documents comprising it are true copies of what they purport to be and that any English translation of the Spanish is a correct translation?

Mr. Scofield: Subject to check, I so stipulate.

Mr. L. E. Lyon: I offer it in evidence.

(Testimony of Jesse E. Hall, Sr.)

The Court: It is received in evidence.

(The document referred to was received in evidence and marked as Defendants' Exhibit P.)

Mr. L. E. Lyon: With reference to these Venezuelan claims, your Honor, suits, there is one thing I would like to have a stipulation to, and that is that the complaints in the Venezuelan actions, both at Barcelona and in Caracas, were filed by Hall, that it was necessary for him to verify the complaints in that action before the Venezuelan Consulate in the United States, and that he did so before they were [1576] filed.

Mr. Scofield: Well, I can't stipulate to that, your Honor, because I was not representing Mr. Hall in those cases and if the complaints were verified, they must have been sent to him and verified at Dallas or at some place of that kind.

The Court: Do you recall, Mr. Hall?

The Witness: No, I don't, at this time.

The Court: Perhaps you can look into it over the recess.

Exhibit Q, Canadian Statement of Claim, is it stipulated to be a true copy of what it purports to be?

Mr. Scofield: Yes, sir.

Mr. L. E. Lyon: I will offer it in evidence.

The Court: Is there any objection?

Mr. Scofield: No objection.

The Court: It is received in evidence.

(Testimony of Jesse E. Hall, Sr.)

(The document referred to was received in evidence and marked as Defendants' Exhibit Q.)

Mr. L. E. Lyon: Exhibits Q-1 and Q-2, I guess, have been offered as plaintiff's exhibits.

The Court: Do you know what they are? Canadian reissue patent——

Mr. L. E. Lyon: The Canadian original and the Canadian reissue patents, your Honor.

The Court: To Wright?

Mr. L. E. Lyon: To Wright. [1577]

Mr. Scofield: I don't believe they have been offered by us, your Honor. They were offered by the defendant—I don't think they were ever offered.

The Court: Have Exhibits 73-A and 73-B been introduced?

Mr. L. E. Lyon: Yes, your Honor, I believe those are the complete exhibits and the words "Claims" are in error.

Mr. Scofield: No. They are just the claims of the patent. These are the formal claims of the patent, your Honor.

The Court: Exhibits 73-A and 73-B are in evidence, then, are they?

Mr. Scofield: Yes, sir.

The Court: Are there any objections to receiving Exhibits Q-1 and Q-2 in evidence? Are they stipulated to be true copies?

Mr. Scofield: It is stipulated that they are true copies. In fact, I furnished one of the patents.

(Testimony of Jesse E. Hall, Sr.)

Mr. L. E. Lyon: I offer them in evidence, your Honor.

The Court: Exhibits Q-1 and Q-2 for identification are received in evidence.

(The documents referred to were received in evidence and marked Defendants' Exhibits Q-1 and Q-2.)

The Court: Exhibit S, a certified copy of Articles of Incorporation of Hall Development Co., and translation. Is it stipulated to be a true copy and a correct translation?

Mr. Scofield: Yes, sir. [1578]

Mr. L. E. Lyon: I offer it in evidence.

The Court: It is received in evidence.

(The document referred to was received in evidence and marked as Defendants' Exhibit S.)

The Court: Exhibit T, Decision of Commissioner of Patents in Interference No. 84,411, of apparently June 14, 1951. Do you stipulate it to be a true copy?

Mr. Scofield: That, your Honor, is already in evidence. No. That is a later decision. I will stipulate as to that.

Mr. L. E. Lyon: I offer it in evidence, your Honor.

The Court: Exhibit T is received in evidence.

(The document referred to was received in evidence and marked as Defendants' Exhibit T.)

(Testimony of Jesse E. Hall, Sr.)

The Court: Exhibit U is Decision of Commissioner of Patents denying petition for rehearing by Hall—June 28, 1951. Is it stipulated to be a true copy?

Mr. Scofield: I will stipulate as to that.

Mr. L. E. Lyon: I offer it in evidence.

The Court: It is received in evidence.

(The document referred to was received in evidence and marked as Defendants' Exhibit U.)

The Court: Exhibit V, Concession of Priority in Interference No. 81,240, dated September 15, 1944, by Hall. Is it stipulated to be a true copy?

Mr. Scofield: Yes, sir. I stipulate as to [1579] that.

Mr. L. E. Lyon: I offer it in evidence.

The Court: It is received in evidence.

(The document referred to was received in evidence and marked as Defendants' Exhibit V.)

The Court: Exhibit W, Hall's Concession of Priority in Interference No. 81,559, dated 9-15-44. Do you stipulate that to be a true copy?

Mr. Scofield: It is in the same category as Exhibit V and I will stipulate to that.

Mr. L. E. Lyon: I offer it in evidence.

The Court: It is received in evidence.

(The document referred to was received in evidence and marked as Defendants' Exhibit W.)

(Testimony of Jesse E. Hall, Sr.)

Mr. L. E. Lyon: That Jones and Berdine report is already in evidence.

The Court: Exhibit X, directive, dated September 20, 1951, signed by Paul D. Foote.

Mr. Scofield: It is in evidence.

Mr. L. E. Lyon: That is in evidence. We have two X's there.

The Court: Do you have that directive, Mr. Clerk, received in evidence on November 10, 1953? Let it be marked Exhibit X-1. That will not interfere with any other marking.

Mr. L. E. Lyon: No. [1580]

(The document referred to was received in evidence and marked as Defendants' Exhibit X-1.)

The Court: Exhibit Y is in evidence.

Mr. L. E. Lyon: The rest of them on that page are in evidence.

Now, in view of the stipulation with respect to Bulletin 101, some of these next exhibits which have to do with the data concerning their publication will not be required to be used. I would be certain if I had a stipulation with respect to Exhibit HH, that that was published before the Bulletin No. 101, which the evidence here would show it was, and a great deal of this evidence might be eliminated and I will ask if such stipulation can be entered into, Mr. Scofield, with reference to Exhibit HH, that it was published and distributed by B & W prior to the distribution and publication of the Bulletin 101.

The Court: Which is exhibit——

(Testimony of Jesse E. Hall, Sr.)

Mr. L. E. Lyon: Which is Exhibit CR.

Mr. Scofield: There was a stipulation during the morning session with regard to this, your Honor, and I will repeat, that is, I am willing to stipulate, as I did this morning, that that bulletin was in existence at the time of the A. P. I. meeting. I won't say prior to it. As I recall, Mr. Barkis testified, and I think that in the public-use proceedings there was some evidence of the art work that was done on the bulletin [1581] and Mr. Barkis testified——

Mr. L. E. Lyon: I am not asking with reference to the bulletin. That stipulation is already in. I am asking with reference to Exhibit HH, which is the single sheet instruction page.

Mr. Scofield: Well, I would have to see that. I don't know what that exhibit——

The Court: Will you examine it over the recess, that is, examine Exhibit CR, the bulletin, and examine Exhibit HH for identification and ascertain whether you are able to stipulate that the publication of Exhibit HH and the distribution of it antedated the publication and distribution of the Bulletin 101, Exhibit CR?

Is that your offer?

Mr. L. E. Lyon: That is right, your Honor.

The Court: Will you undertake that, Mr. Scofield?

Mr. Scofield: Yes, sir; I will look at this exhibit.

Mr. L. E. Lyon: Now, if that stipulation is entered into, it will eliminate Exhibits EE, FF, GG

(Testimony of Jesse E. Hall, Sr.)

and some of the others down here which we will get to on the next page.

The Court: Exhibit JJ is a certified copy of Weatherford Manufacturing Company charter of July 15, 1948. Is it stipulated to be a true copy?

Mr. Scofield: Yes, I will stipulate that.

The Court: Do you offer it in evidence? [1582]

Mr. L. E. Lyon: I offer it in evidence.

The Court: It is received in evidence.

(The document referred to was received in evidence and marked as Defendants' Exhibit JJ.)

The Court: Exhibit LL is a certified copy of charter of Nevada Leasehold Corporation, December 16, 1949. Is it stipulated to be a true copy?

Mr. Scofield: Yes, I will stipulate to that.

The Court: Do you offer it in evidence?

Mr. L. E. Lyon: I offer it in evidence.

The Court: It is received in evidence.

(The document referred to was received in evidence and marked as Defendants' Exhibit LL.)

The Court: Exhibit MM-1 is a letter of 12-10-48, Weatherford Oil Tool Co. to Louisiana Supply Co. Is it stipulated to be a true copy?

Mr. L. E. Lyon: And Exhibit MM-2 is a document attached to Exhibit MM-1, so they should both go together.

Mr. Scofield: What is it?

Mr. L. E. Lyon: That is a letter which they

(Testimony of Jesse E. Hall, Sr.)

wrote to Louisiana Supply Company of that date, and I think the attachment was a set of——

Mr. Scofield: I believe that was the announcement of the Weatherford Oil Tool Company taking over the business of the Weatherford Spring Company, if my memory serves me right. [1583]

Mr. L. E. Lyon: That is what this note says.

The Court: Will you stipulate that that is a true copy?

Mr. Scofield: I will stipulate as to that.

The Court: That they are true copies and that they were sent on or about December 10, 1948?

Mr. Scofield: Yes, I will stipulate as to that.

Mr. L. E. Lyon: I offer them in evidence, your Honor. [1584]

The Court: Exhibits MM-1 and MM-2 are received in evidence.

(The documents referred to, and marked Defendants' Exhibits MM-1 and MM-2, were received in evidence.)

The Court: Exhibit NN, Weatherford Spring catalog (undated). Is it stipulated to be a true copy?

Mr. L. E. Lyon: That is the man standing in the front.

Mr. Scofield: Yes, I will stipulate.

The Court: Can't you offer a stipulation as to the approximate date of publication?

Mr. L. E. Lyon: I can offer the stipulation that that was published in October of 1940, and a copy

(Testimony of Jesse E. Hall, Sr.)

of it was handed to Mr. Wright and Mr. Barkis—wasn't that the one?

Mr. Scofield: No.

The Court: Do you know when it was published?

Mr. L. E. Lyon: I have no idea of when it was published on this one.

The Witness: It was published before 1944.

The Court: Well, about when?

The Witness: I would say about 1943, because the one with the building on it——

Mr. Scofield: No. He is talking about another exhibit. You are talking now about the catalog with the man standing on the front, with the centralizers at his side?

The Witness: Well, that catalog was published, will [1585] correspond with the date of the contract with Frick-Reid.

Mr. Scofield: When was that?

The Witness: So we can figure that up. We can stipulate to the time for it.

The Court: Will you make a note and offer a stipulation on that tomorrow? Do you offer the document, anyway?

Mr. L. E. Lyon: I will offer it in evidence, your Honor, subject to the stipulation.

The Court: Received in evidence.

(The document referred to, and marked Defendants' Exhibit NN, was received in evidence.)

The Court: Exhibit OO is the World Oil.

Mr. L. E. Lyon: Those are publications of Weatherford Oil Tool Company. In that publica-

(Testimony of Jesse E. Hall, Sr.)

tion, your Honor, I believe there is an article purportedly written by—let me see, what is OO?

The Court: Very well gentlemen, let us go over these and see if we can continue this the first thing tomorrow morning and dispose of most of these documents.

Mr. L. E. Lyon: I think perhaps we can get rid of OO, your Honor, as long as it is still right here. It is purportedly written by John A. Hall. It is pages 220, 221, 222 and 223 of the World Oil issue of May, 1949.

The Court: Is it stipulated to be a true copy of what it purports to be?

Mr. Scofield: Yes, sir; I recognize it. [1586]

The Court: And that the John Hall referred to is the John Hall who is the son of the witness now on the stand and who has testified?

Mr. Scofield: So stipulated.

The Court: Do you offer it in evidence?

Mr. L. E. Lyon: I offer this OO in evidence as Exhibit OO, your Honor.

The Court: Received in evidence.

(The document referred to, and marked Defendants' Exhibit OO, was received in evidence.)

The Court: PP also deals with the World Oil of December, 1948, page 284. May we have the same stipulation with respect to it?

Mr. Scofield: Yes, sir; subject to checking as to that date.

Mr. L. E. Lyon: I will offer it in evidence.

(Testimony of Jesse E. Hall, Sr.)

(The document referred to, and marked Defendants' Exhibit PP, was received in evidence.)

The Court: Exhibit SS.

Mr. L. E. Lyon: A letter of Foote to Houghton, December 12, 1947. That is a letter, a photostatic copy of which was supplied to me and was used in the public-use proceeding.

Mr. Scofield: Stipulated as to the letter.

The Court: Stipulated to be a true copy and it was sent on or about the date it bears? [1587]

Mr. Scofield: Yes, sir.

The Court: Received in evidence.

(The document referred to, and marked Defendants' Exhibit SS, was received in evidence.)

The Court: Next is TT, 9-9-52, decision of Commissioner of Patents in public use proceeding. Stipulated to be a true copy?

Mr. Scofield: Yes, sir.

The Court: Offer it in evidence?

Mr. L. E. Lyon: I will offer it in evidence.

The Court: Received in evidence.

(The document referred to, and marked Defendants' Exhibit TT, was received in evidence.)

The Court: UU, 12-9-52, Decision of Commis-

(Testimony of Jesse E. Hall, Sr.)

sioner of Patents in public use proceeding. Stipulated to be a true copy?

Mr. Scofield: Yes, sir.

Mr. L. E. Lyon: I will offer it in evidence.

The Court: Received in evidence.

(The document referred to, and marked Defendants' Exhibit UU, was received in evidence.)

The Court: VV is a letter of July 28, 1950, Scofield to Kneale of The Texas Company. Stipulated to be a true copy and that it was sent on or about the date it bears?

Mr. Scofield: Yes, sir. That, I believe, is already in, [1588] your Honor. I think we put that in today.

Mr. L. E. Lyon: Not that letter. Letter to Kneale of The Texas Company, VV. I didn't get the date.

Mr. Scofield: I will stipulate as to that letter.

Mr. L. E. Lyon: I will offer it in evidence.

The Court: Received in evidence.

(The document referred to, and marked Defendants' Exhibit VV, was received in evidence.) [1589]

* * *

No. 14626

United States
Court of Appeals
For the Ninth Circuit.

JESSE E. HALL, WEATHERFORD OIL TOOL COMPANY, INC., a Corporation; WEATHERFORD SPRING COMPANY OF VENEZUELA, C.A., a Corporation; HALL DEVELOPMENT COMPANY, C.A., a Corporation; WEATHERFORD, LTD., a Corporation; WEATHERFORD INTERNACIONAL, S.A., DE CV., a Corporation; NEVADA LEASEHOLD CORPORATION, a Corporation; PARKER INDUSTRIAL PRODUCTS, INC., a Corporation,

Appellants,

vs.

KENNETH A. WRIGHT and B & W, INC., a Corporation,

Appellees.

KENNETH A. WRIGHT and B & W, INC., a Corporation,

Appellants,

vs.

JESSE E. HALL, WEATHERFORD OIL TOOL COMPANY, INC., a Corporation, et al.,

Appellees,

Transcript of Record
In Nine Volumes

Volume III
(Pages 1021 to 1508)

Appeals from the United States District Court for the Southern District of California, Central Division.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco 10-12-55

No. 14626

United States
Court of Appeals
For the Ninth Circuit.

JESSE E. HALL, WEATHERFORD OIL TOOL COMPANY, INC., a Corporation; WEATHERFORD SPRING COMPANY OF VENEZUELA, C.A., a Corporation; HALL DEVELOPMENT COMPANY, C.A., a Corporation; WEATHERFORD, LTD., a Corporation; WEATHERFORD INTERNACIONAL, S.A., DE CV., a Corporation; NEVADA LEASEHOLD CORPORATION, a Corporation; PARKER INDUSTRIAL PRODUCTS, INC., a Corporation,

Appellants,

vs.

KENNETH A. WRIGHT and B & W, INC., a Corporation,

Appellees.

KENNETH A. WRIGHT and B & W, INC., a Corporation,

Appellants,

vs.

JESSE E. HALL, WEATHERFORD OIL TOOL COMPANY, INC., a Corporation, et al.,

Appellees,

Transcript of Record
In Nine Volumes

Volume III
(Pages 1021 to 1508)

Appeals from the United States District Court for the Southern District of California, Central Division.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—10-7-55

DEPOSITION OF LESLIE W. VOLLMER

called for the purposes of giving testimony on behalf of the applicant, respondent, having first been sworn by the Notary Public in attendance, deposes and says:

Direct Examination

By Mr. Scofield:

Q. Please state your name.

A. Leslie W. Vollmer.

Q. Your residence?

A. 434 Shady Avenue, Pittsburgh 6, Pennsylvania.

Q. How are you employed at the present time?

A. I am employed by the Gulf Research & Development Company in the capacity of the [1596] Director of the Materials and Production Chemistry Division.

Q. Will you briefly state your educational qualifications, Mr. Vollmer?

A. I am a graduate of Pennsylvania State College with a major degree in chemistry and a minor in metallurgy.

Q. How long have you been employed by Gulf Research & Development Company?

A. Since May 20, 1929.

Q. In this matter, this morning we are particularly concerned with the scratchers that are used in connection with the conditioning of oil wells for cementing operations. When did you first have knowledge of the use of scratchers for such purpose?

A. I don't believe I can be exact as to the first

(Deposition of Leslie W. Vollmer.)

time, as to the time of my first knowledge, but I should say it was about 1945—the latter part of 1945, I should say.

Q. Do you know when the Gulf Research first became interested in the use of scratchers for well conditioning?

A. I think—strike that out. It is my recollection that it was about 1945.

Q. And what part did you play in this matter insofar as Gulf Research is concerned, if you [1597] did?

A. From the period beginning about April, 1946, I was directly concerned with our field developmental work relating to the cementing of casing, in which scratchers and centralizers were an important part.

Q. What was this field development work that you mentioned in your last answer?

A. The project originally began as a study of squeeze cementing, and it rapidly developed that the necessity for squeeze cementing occurred because of unsatisfactory primary cementing of casing, and the failure of primary cementing of casing was largely due to the retention of mud cake on the walls of a drilled hole and channeling of cement through this mud cake, giving an incomplete sheath around the casing. The more or less obvious means of eliminating this mud cake from the walls of the hole was by means of some scrubbing or brushing implement, which brought scratchers into the picture.

(Deposition of Leslie W. Vollmer.)

Q. Did Gulf Research go into this as a project?

A. Yes. That is, it went into the matter of casing cementing as a general broad project.

Q. Where was the work principally done?

A. The work was done principally in the Gulf coast area.

Q. What type scratchers did you use in that work? [1598]

A. The types of scratchers that were used in our developmental work were manufactured by the Weatherford Spring Company, as I believe it was known at that time.

Q. Did you have anything to do with the firm of B & W in connection with this work, this project that Gulf Research was carrying on? And you might say in that connection, when you first contacted that organization, if you did?

A. My first contacts with that organization occurred here at Gulf Research & Development Company's laboratories about the middle of 1946, as I recall it, as a result of an exchange of correspondence between Mr. Kenneth Wright and Mr. Bruce Barkis, who were seeking to engage our interests in their equipment for cementing oil wells.

Q. Were they offering you equipment for this purpose of well conditioning? A. Yes.

Q. And you have indicated that your contacts were with Messrs. Wright and Barkis in the middle of 1946? A. Yes.

Q. What type of equipment were they offering you? That is, I would like to have you, if you will,

(Deposition of Leslie W. Vollmer.)

just briefly describe what they were offering you in [1599] the way of scratchers.

A. At that time, they were offering a device known as a wall cleaning guide. Do you want a description of that?

Q. Yes; insofar as you are able to give it.

A. Well, the wall cleaning guide offered at that time was essentially a cylindrical body, from which projected, in a radial manner, a multiplicity of wire bristles which were slightly curved on the ends. The purpose was to provide, in effect, a circular brush that could be utilized to scrub the wall of an oil well for purposes of removing mud cake.

Q. How were these wires or bristles curved? In what direction were they curved?

A. The wires were curved—the wires were curved upward, so that they would be, or would tend to be parallel to the axis of a pipe.

Q. Did they recommend to you how these wall cleaning guides were to be mounted for this well conditioning purpose? A. Yes.

Q. Will you briefly describe that?

Q. (By Mr. Lyon): Before you do that, Mr. Vollmer, was such a recommendation in [1600] writing?

A. I don't recall any specific written matter describing the mounting of the so-called wall cleaning guide. There was published and available advertising literature that described the method of mounting and utilizing these guides.

Q. (By Mr. Scofield): Do you remember when you first received such literature?

(Deposition of Leslie W. Vollmer.)

A. I don't recall any specific date, but I believe that it was about the middle of 1946.

Q. Proceed, if you will, and explain how they recommended these wall cleaning guides be mounted in order to effect the purpose for which they were to be used.

* * *

A. I have not examined the bulletins that describe the mounting of the wall cleaning guides recently, and I therefore must rely on a recollection of what was specifically stated in those bulletins, but it is my [1601] recollection that in general, the method of mounting was as follows——

Q. Now, I want you to limit your answer. My question was directed to the recommendation that Mr. Wright and Mr. Barkis made to you during this first meeting that you had in 1946, when you say you talked to them with regard to these wall cleaning guides. Have you any recollection as to how they recommended the guides be mounted at that time?

* * *

A. Considerable time has gone by——

Q. That's right.

A. ——and some of these dates are not too firmly fixed. However, that can be established from our records, which will give exact dates. And I now think that the first contact was about the middle of 1947. [1602]

Q. And where was this meeting that you had with Mr. Wright and Mr. Barkis in the middle of 1947, as you now recall it?

(Deposition of Leslie W. Vollmer.)

A. Mr. Wright and Mr. Barkis visited us at this laboratory about that time, following the exchange of correspondence previously mentioned.

Q. Now, do you recall at the present time whether or not they furnished you with any literature at that time, as to the use of their products or tools?

A. Yes, I believe they did, about that time. Yes, I believe they did, about that time, supply us with literature on their product and methods of use.

(The answer was read.)

Q. Did you discuss with them the work that Gulf Research had done on this project? A. Yes.

Q. Did you indicate to them what type of tools the Gulf had used in connection with this work?

A. Yes.

Q. Was there any conversation concerning the legal difficulties or difficulties between Mr. Hall and B & W at the time that you met Wright and Barkis on this first occasion?

A. There may have been a minor amount of discussion on that point, but it is my recollection that the [1603] major portion of the conference was concerned with the application of the B & W wall cleaning guide to cementing operations.

Q. As a result of this meeting, did your organization—that is, the Gulf Research—make any investigation of their tools, that is, of the B & W wall cleaning guides?

A. As a result of the initial contact and subse-

(Deposition of Leslie W. Vollmer.)

quent contacts, arrangements were ultimately made for actual trial of B & W wall cleaning equipment in Gulf wells.

Q. Now, when and where was that done?

A. As I recall it, those tests were made in the Gulf coast area, either in the latter part of 1947 or the early part of 1948—during that period.

Q. And did you test out at that time—that is, in the Gulf coast area—the wall cleaning guides of B & W? A. Yes.

Q. There has been offered here in evidence by the Petitioner, a deposition that was taken of Mr. Houghton, who is Patent Attorney for the Gulf Company—that is, the Gulf Oil and the Gulf Research & Development Company—and in that deposition, which has been marked here for identification—I believe it was [1604] offered as Petitioner's Exhibit No. 4-E—Mr. Houghton indicated that about April 17, 1947, you went over to Washington to discuss these matters with him. Do you recall that?

* * *

A. Yes, I do.

Q. What was the purpose of your going to Washington on that occasion, do you recall?

A. My recollection of that visit to Washington is that we were advised that certain patents relating to the use of wall cleaning guides in oil wells might enter into the then used cementing technique that had developed out of our field activities, and it was advisable to have the opinion of our patent counsel

(Deposition of Leslie W. Vollmer.)

on the bearing that these patents might have on our cementing operations. My visit to Mr. Houghton at that time was for the purpose of informing him on the work that we had done and to discuss the situation in general. [1605]

Q. In this deposition, on page 14, Q. 27, Mr. Houghton was asked: "You have indicated that Mr. Vollmer came to Washington as a result of this correspondence, have you not?" The answer was: "I don't think I indicated, but he did come here on April 17, 1947." On page 13, in answer to a question concerning a telegram, Mr. Houghton said: "It is my memory that I arranged over the telephone with Dr. Foote or someone in charge, to have Mr. Vollmer of his office to come to Washington and confer with me, as I knew that Mr. Vollmer was very well posted, from a technical and engineering standpoint, on matters which would seem were involved or which would seem to be involved in this situation." Now, is it a fact that you were advised as to the technical—you were posted as to the technical and engineering phases of this project of Gulf?

* * *

A. If I understand your question, I would say that I was well informed on the developments that had been made in our operations concerning cementing of [1606] casing.

Q. Now, what was the purpose of this meeting in Washington, as you recall it, with Mr. Houghton?

(Deposition of Leslie W. Vollmer.)

Mr. Lyon: Objected to as entirely immaterial.

A. Following the completion of our field developmental work, or the initial phases of our field developmental work, a report had been prepared which was circulated throughout our organization. A copy of that report had been submitted to Mr. Houghton. He suggested that we visit him in Washington for the purpose of clarifying some of the technicalities, with which he was not at that time familiar, and because he intended to become fully informed on what was involved in the newly developed cementing technique, so that he would be able to pass judgment on the patent art that might bear on our cementing technique.

Q. Did you bring Houghton down to date on the Gulf project and on the use of the scratcher that had been used by Gulf in the Gulf coastal area in connection with the project of well conditioning which you have described?

A. As I recall the meeting, I did.

Q. Did you bring Houghton down to date on the tests that you had made on the B & W tools on the Gulf coast—or had they been made at that time? [1607]

A. That meeting—What was the date of the meeting?

Q. April 17—Do you mean the meeting between Houghton and yourself?

A. With Mr. Houghton, yes.

Q. That was April 17, 1947, according to his deposition.

(Deposition of Leslie W. Vollmer.)

Q. (By Mr. Lyon): Haven't you any recollection of when it was, Mr. Vollmer?

A. I don't recall the specific date, but I have means of checking that date in our files.

* * *

Q. Have you any reason to doubt Mr. Houghton's statement in his deposition, as to when the meeting took place?

* * *

A. None whatsoever.

(The last question and answer were read.)

Q. (By Mr. Scofield): You haven't answered the question as to whether or not you brought Houghton up to date on the use of B & W equipment on the Gulf coast, if it had been done [1608] at the time, or if you had made those tests on the equipment at the time you saw Houghton.

A. We had not yet made tests on the Gulf coast with B & W equipment, so, therefore, no results of any such tests were discussed with Mr. Houghton at that time.

Q. So up to the time that you saw Mr. Houghton, when you went over to Washington and had this meeting with Mr. Houghton, the only equipment, scratcher equipment, that Gulf had used on this project of well conditioning was the Weatherford equipment? A. That's right.

Q. Now, when was your next meeting with the representatives of B & W after this first meeting that you have already testified about?

(Deposition of Leslie W. Vollmer.)

A. As I recall it, there was a second meeting in September of 1947 with Mr. Wright and his attorney, in Pittsburgh, on which occasion the manner of the development of the B & W wall cleaning guides, and their bearing on our developmental work, were discussed in some detail with Mr. Houghton.

Q. Did you remember a meeting that was held on June 17, 1947, either here in Pittsburgh or in Harmarville, with representatives of B & W?

Mr. Lyon: Objected to as leading.

A. Yes, I do. [1609]

Q. Have you any way of fixing the date of that meeting?

A. Yes, I do, because our files will show the exact date of that meeting.

Q. I wish you would check that with your files, to see the date in June that you talked with the B & W people.

(The witness referred to files.)

A. An exchange of telegrams between Dr. Paul D. Foote and Mr. Bruce Barkis on June 13, 1947, arranged for a conference which was held June 17, 1947, at the laboratories of the Gulf Research & Development Company.

Q. Does it indicate, in your file, that these representatives of B & W came here on that date, on June 17? A. Yes.

Q. Did you attend the meeting that was held with Mr. Barkis and Mr. Wright? A. Yes.

Q. Do you have in your files a report of the meeting?

(Deposition of Leslie W. Vollmer.)

A. Yes, in the form of a letter to Mr. A. M. Houghton.

Q. And what is that dated?

A. The letter is dated June 23, 1947.

Q. What was the substance of the discussion that [1610] took place between the representatives of Gulf Research and B & W on that occasion?

* * *

A. According to our report to Mr. Houghton previously referred to, Mr. Barkis and Mr. Wright informed us that the extensive use of scratching equipment in Gulf cementing operations and the wide publicity resulting from that work had made inroads into their business on wall cleaning guides, and the purpose of their visit was to engage our interests in their equipment and to determine whether or not it could not be used equally as well as the equipment that had been used during our developmental work. They also discussed developments of a new design of scratcher which had not at that time been made public, although they stated that it would soon be available, and which they thought we might consider more interesting to us than their regular wall cleaning guide.

Q. What sort of tool were they actually recommending at this June meeting in 1947? Was it any different than what you had known of before, on this earlier date in 1947 when you had the meeting with Mr. Wright? [1611]

* * *

A. As I recall it, both Mr. Wright and Mr.

(Deposition of Leslie W. Vollmer.)

Barkis felt that excellent results could be obtained with their regular wall cleaning guide, but they also informed us of a new development in a scratching device that was in many respects a decided departure from their regular wall cleaning guide, and on the occasion of their visit, they showed us photographs of the new device in several forms, one of them being a separate scratcher of the cylindrical type; another was a combination scratcher and centralizer, as I recall it, with the scratching elements contained in one end of the centralizer; and a third application of the new development was a strip form that could be welded to the pipe as frequently as desired.

Q. Now, what I am particularly interested in is, what tool did they have available to furnish you at the time of this June 17 meeting in 1947?

* * *

A. To the best of my knowledge, the only tool immediately available—that is, on June 17, 1947—was the regular B & W wall cleaning guide.

Q. I put before you two photographs, which I will ask the reporter to mark, the first as [1612] Applicant's Exhibit 44, and a second photograph as Applicant's Exhibit 44-A, for identification.

(Thereupon, Applicant's Exhibits Nos. 44 and 44-A for identification were marked.)

Q. (By Mr. Scofield): I will ask you if you can identify the object which is shown in those two photographs, Applicant's Exhibits 44 and 44-A for identification.

(Deposition of Leslie W. Vollmer.)

A. They appear to be photographs of the device that I know as the B & W regular wall cleaning guide.

Q. And was that the type of tool that B & W was offering Gulf at the time of this June, 1947, meeting—that is, on June 17?

* * *

A. Yes, along with the new development which they stated would be available in the very near future.

Q. Did they have any of these new development tools at the time that you had this meeting, on June 17, 1947? A. Not in our offices, no.

Q. Was there any discussion at this meeting on June 17, 1947, of the Hall scratcher or the Weatherford scratcher? A. Yes, there was. [1613]

Q. What was the discussion that was had concerning the Weatherford scratcher at that time?

A. At the time of the conference, we explained to Mr. Wright and Mr. Barkis that in our developmental work in the field, we had initially selected what we thought was the most promising equipment to experiment with, and that the excellent results subsequently obtained made us reluctant to deviate from equipment that had successfully performed. At that time Mr. Wright and Mr. Barkis informed us that there was nothing to prevent anyone from producing a similar device, and there was some discussion concerning our attitude on the duplication of the type of equipment that we had used in our experimental work, by B & W.

(Deposition of Leslie W. Vollmer.)

Q. Did Mr. Wright or Mr. Barkis at that meeting indicate that the use of wires extending nonradially from the collar originated by Mr. Wright, was Mr. Wright's invention?

* * *

A. I don't recall any specific discussion at that time on that particular point.

Q. Do you recall that either Mr. Wright or Mr. Barkis stated that the use of nonradial wires was Mr. Wright's invention and not Mr. Hall's? [1614]

* * *

Q. Do you recall at that meeting in June of 1947 that either Mr. Wright or Mr. Barkis stated that they had used nonradial type scratchers—that is, scratchers with nonradial wires—in California, in a well, as early as 1940?

* * *

A. No, I don't.

Q. Did either Mr. Wright or Mr. Barkis during this meeting in June of 1947 mention the use of nonradial wire scratchers in a well of Thomas Kelley & Sons, which was McMillan Community No. 1 in the Athens-Rosecranz field? Do you recall their stating that they had used scratchers with nonradial wires back in 1939 on such a well in California?

* * *

A. No, I do not.

Q. Now, did either Mr. Wright or Mr. Barkis, during this meeting in June of 1947, tell you that Mr. Wright had furnished scratchers to be tested

(Deposition of Leslie W. Vollmer.)

by the Union Oil Company on Dominquez Hill in tests that were known as the Jones and Berdine, and that in these tests there were used scratchers with nonradial wires? [1615]

* * *

A. I recall a discussion of the Jones and Berdine tests, but I do not recall any discussion on the use of scratchers with nonradial wires.

Q. You indicated in one of your previous answers that B & W had some new developments under way, did you not? A. Yes.

Q. And you have also indicated that among these developments, there was a scratcher and centralizer combination? A. Yes.

Q. Did they indicate at this meeting in June, 1947, when they talked with you and the Gulf Research organization on that occasion, that they were privileged to make the Hall type scratcher?

* * *

A. I recall that there was some discussion to the general effect that there were no existing patents relating to the Hall scratcher, and that, therefore, there was no reason why anyone could not manufacture a similar scratcher.

Q. And did they on that occasion indicate that they could? [1616]

Mr. Lyon: Same objection.

A. Yes, I believe that they did.

Q. Now, after this meeting, do you know whether or not they ever did make up any Hall type scratchers and furnish them to the Gulf Research & Development Company?

(Deposition of Leslie W. Vollmer.)

Mr. Lyon: Objected to as indefinite, and also as calling for a conclusion from the witness, and also leading. A. Yes, they did.

Q. Can you check in your files to determine whether or not the B & W ever furnished Gulf Research with this Hall type scratcher, or do you know whether they actually did, and when?

A. Yes, I do know.

Q. How long after this meeting on June 17, 1947, were such scratchers furnished, if they were?

A. I believe that it was within the next two months, but the exact date can be established from our files.

Q. Would you check that in your files, to see when they furnished such scratchers?

A. We received a letter from Mr. K. A. Wright, dated June 30, 1947, addressed for the attention of Mr. B. B. Westcott, W-e-s-t-c-o-t-t, as it is in the letter— [1617] informing us that B & W were forwarding to us by parcel post two of their coil spring wire type wall cleaning guides suitable for mounting on 5½-inch A.P.I. casing.

Q. I put before you a photograph which——

Mr. Lyon: Just a moment. The witness was obviously reading from a letter in the last answer. I move that the read portion be stricken as not the best evidence. The letter itself is the best evidence.

(The last answer and pending question were read.)

Q. (By Mr. Scofield): Would you read into the record the entire letter, Mr. Vollmer? I would like

(Deposition of Leslie W. Vollmer.)

to have you state first, before reading the letter, what the file is that the letter is contained in, and whether it is an original letter from Wright or whether it's a copy.

A. The following original letter from Mr. K. A. Wright is contained in Gulf Research & Development Company file from the Materials and Production Chemistry Division—that part is necessary—entitled "R.D.-20 Oil Well Cementing, (1946 to 1947, inclusive)—June 30, 1947, Gulf Research & Development Company, Harmarville, Pa."

Q. Is it on a letterhead?

A. "Attention B. B. Westcott." The letter is written on the letterhead of B & W, Incorporated. The letter [1618] is as follows:

"Gentlemen:

"We are forwarding to you by parcel post two of our coil spring wire type wall cleaning guides suitable for mounting on 5½-inch A.P.I. casing. Any wire length desired can be supplied and they will be made in all casing sizes. These guides are samples of the types we are offering to the oil industry and are supplied you for examination, testing and approval for use in Gulf Oil Company's and subsidiaries' field operations. These samples are submitted in accordance with our statements made to you during the conference we had with you in your office. We would appreciate your informing us which of the two types, the thin wall or the standard wall thickness, you are using in the various areas in which you are operating. Mr. Teplitz

(Deposition of Leslie W. Vollmer.)

stated as we were leaving that you were using the thin wall type, and I did not understand whether he referred to the South American operations or the Gulf coast or possibly both areas.

"We appreciate the time given us to thoroughly discuss the points related to the cementing of casing and our position in this work, together with the supplying of the various types of equipment.

"Yours very truly, B & W, Inc. (Signed) K. A. Wright."

Q. Do you know whether those scratchers sent by [1619] Mr. Wright at the time that he wrote that letter, were ever received by the Gulf Research or by Mr. Westcott? A. Yes, they were.

Q. Did you personally see the scratchers that were sent on by Wright? A. Yes, I did.

Q. Explain what those scratchers were, and I am interested particularly in the type of collar, the springs or wires that were used in the collar and how they were attached.

Mr. Lyon: That is objected to as calling for secondary evidence and not the best evidence.

A. As I recall the scratchers, they appeared to be virtually an exact duplication of the Weatherford type scratcher. Do you want a description of it?

Q. I think that description is enough. In the California depositions, the Petitioners in this case were called upon to produce one of the scratchers that were sent to Gulf, and a photograph was taken of the scratcher which they produced and it was

(Deposition of Leslie W. Vollmer.)

offered in evidence—that is, the photograph was offered in evidence—as Applicant's Exhibit No. 25. I would like to have you look at the photograph of that, or look at that exhibit, and say whether or not you can identify that (handing to witness). [1620]

Mr. Lyon: Let me see what he is showing the witness.

(Photograph was handed to Mr. Lyon.)

A. I cannot identify the scratcher depicted in Exhibit 25 as the identical scratcher that I examined, but it is my recollection that is the same as the scratcher that I did see.

Q. Were the scratchers that were sent to Mr. Westcott with this June 30 letter in 1947, scratchers with nonradial wires? A. Yes.

Q. Did the wires have coils—— A. Yes.

Q. ——interposed in the wire scratchers or the abrading wires? A. Yes.

Q. And were those coils located in holes in the collars? A. Yes.

Q. In the collar? A. Yes.

Q. Now, at the time that these scratchers were sent to Gulf in June of 1947, to your knowledge, was there any representation made to you or to Gulf Research in your presence, or do you have any correspondence [1621] indicating that Wright was the originator of these nonradial wire scratchers?

* * *

(Deposition of Leslie W. Vollmer.)

A. I do not recall Mr. Wright's ever having so indicated and I know of no correspondence in our files that would so indicate, either.

Q. At the time that these two scratchers were furnished to Gulf Research, was there, to your knowledge, any representation made to you or to Gulf Research that Hall was barred from obtaining a patent on this type of scratcher because of the public use of Wright's at Thomas Kelley & Sons' well in California in 1939?

* * *

A. At the time of the June, 1947, conference with Mr. Wright and Mr. Barkis, I recall no such statement having been made.

Q. Did they follow up with any such statement at the time that they furnished Gulf Research with these [1622] scratchers?

* * *

A. Not at the time the scratchers were submitted to us for our examination.

Q. At the time that these scratchers were submitted to you, did B & W state that Hall was barred from obtaining a patent on this type of scratcher because of a public use that had been performed with Wright's scratchers by Jones and Berdine in November or December of 1939?

* * *

A. I don't recall any such contention at the time of the June, 1947, meeting with Mr. Wright and Mr. Barkis.

Q. Now, at the time that B & W furnished these two Hall-type scratchers to Gulf Research, did B &

(Deposition of Leslie W. Vollmer.)

W indicate that Hall was barred from obtaining a patent because of certain early advertising or publications which Hall himself had put in the Oil Weekly or the Oil and Gas Journal in 1941?

* * *

A. I don't recall any specific discussion of that point at the time of the June, 1947, conference.

Q. And do you recall of any such statement being [1623] made when these scratchers were furnished Gulf Research on June 30, 1947, or a day or two thereafter, as soon as they could arrive from California?

* * *

A. No, I do not.

Q. Now, you have indicated in one of your previous answers that there was a further conference with Mr. Wright in September of 1947, have you not? A. Yes.

Q. Can you fix that date for me a little more definitely, from your files?

A. Yes, I can. The date of that conference was September 8 and 9, 1947.

Q. Where was it held?

A. In the Gulf Law Library, Gulf Building, Pittsburgh, Pennsylvania.

Q. Do you know who was present?

A. Those present at the meeting were K. A. Wright, Mr. J. Harold Decker, Mr. A. M. Houghton, Dr. B. B. Westcott and L. W. Vollmer.

Q. Can you identify these people for the record?

(Deposition of Leslie W. Vollmer.)

A. Mr. Wright represented B & W, Incorporated; Mr. Decker was General Counsel, B & W, Incorporated; Mr. [1624] Houghton was Patent Counsel for the Gulf Oil Corporation; Dr. B. B. Westcott was at that time Assistant Director, Gulf Research & Development Company; and I was Director of the Materials and Production Chemistry Division, Gulf Research & Development Company.

Q. Does your file show the purpose of this meeting?

A. Yes. The purpose of the meeting was to provide Mr. Wright and his attorney an opportunity to review the background in the art of casing cementing, and to explain the development work that B & W had conducted, and to attempt to clarify the patent situation relating to scratchers and their use in oil wells, and to inform us, in a general sort of way, about an agreement that had been entered into by Mr. Wright and Mr. J. E. Hall. [1625]

* * *

Q. At the time of this September conference, was B & W then offering Gulf Research a tool of the scratcher type for use in their well conditioning, Mr. Vollmer? A. Yes.

Q. Did it differ in any regard from the wall cleaning guide which is shown here as Applicant's Exhibits 44 and 44-A (handing to witness)?

A. They offered a device the same as that shown in Applicant's Exhibits 44 and 44-A, and stated that they would almost immediately be in a position to supply a scratcher that we knew as the Weatherford type.

(Deposition of Leslie W. Vollmer.)

Q. And was that similar to Exhibit 25 that was shown to you previously?

A. Which was similar to Exhibit No. 25—that is, [1630] Applicant's Exhibit No. 25.

Q. Now, at the time of this meeting in September, did Wright there suggest that he was the inventor of the nonradial type scratcher?

Mr. Lyon: Ojected to as leading and suggestive, and not the best evidence, incompetent, irrelevant and immaterial.

A. I do not recall Mr. Wright so claiming.

Q. Did Wright at this meeting in September, 1947, indicate that Hall was barred from obtaining a patent because of a use at the Thomas Kelley & Sons' well in California in 1939?

* * *

A. No, he did not.

Q. Did Mr. Wright at this meeting in September of 1947 state that Mr. Hall was barred from obtaining a patent on his type scratcher because of a public use that had been performed at the Jones and Berdine tests on Dominguez Hill by the Union Oil Company in 1939?

* * *

A. I do not recall Mr. Wright stating that the Jones and Berdine usage specifically was the basis of any such belief on his part. [1631]

Q. Now, there was a discussion during that meeting, was there not, of the Hall advertisements that appeared in the Oil Weekly in 1941 and the Oil and Gas Journal? A. Yes.

(Deposition of Leslie W. Vollmer.)

Q. Now, what was that discussion, as you recall it?

A. Well, Mr. Wright pointed out that the Weatherford scratcher had been illustrated in those two journals on the dates mentioned, and he expressed the opinion that Hall would not be able to obtain a patent on his scratcher because the device was described in a printed publication and was on sale and in public use more than one year before the filing date of what he called the continuation-in-part application of Hall.

Q. There was also some other discussion during the meeting concerning this advertising, was there not? A. Yes, I think there was.

Q. Do you recall what that related to?

A. Will you repeat that, please?

(The pending question was read.)

Q. What did the discussion relate to?

A. My present recollection is that the discussion involved not only this advertising matter, but also advertising matter of B & W which was dated and was intended to show the early date of the work done by B & W [1632] on the development of wall cleaning guides and their application to casing cementing.

Q. Was there any comparison made, during the meeting, of this advertising with any work that had been done by B & W on scratchers?

A. Yes. I recall that there was some comparison between them, between the two groups of advertising.

(Deposition of Leslie W. Vollmer.)

Q. Do you know whether the Gulf Research considered this Hall advertising, after it was suggested by Wright?

* * *

A. Well, we were interested in it, but I do not recall that the advertising had any particular influence on the technical aspects of the scratcher in which we were solely concerned.

Q. Do you recall whether Wright, at this meeting, had copies of the Hall advertising in 1941 which he had called to your attention?

A. Yes, I believe he did.

Q. Did he have copies of Hall applications that he said the advertising anticipated?

A. I don't believe I know that. [1633]

Q. Did the Gulf Research, to your knowledge, follow up this matter of the Hall advertising and whether it constituted a bar to Hall's obtaining a patent?

* * *

A. Yes.

Q. In what way did Gulf Research follow up that matter that Wright had suggested at this September meeting in 1947?

A. By requesting Mr. Houghton examine the entire controversy as it existed at that time, to determine what bearing it might have on the use of scratchers in our casing cementing operations.

Q. And did you personally, Mr. Vollmer, take any part in this investigation that was made by Mr. Houghton with respect to this advertising?

* * *

(Deposition of Leslie W. Vollmer.)

A. I do not recall any direct personal action on my part. [1634]

* * *

Q. Do you recall whether there was any discussion concerning the manner in which the wires were anchored in the Hall scratchers, as disclosed in his application? [1636]

* * *

A. I recall a discussion between Mr. Houghton and Mr. Decker and Mr. Wright, the purpose of which was to attempt to clarify what the intent was of the agreement between Hall and Wright in reference to the applications for patents by Mr. Hall.

Q. Now, as I understand your testimony, up to the time of the conference in September of 1947, there had been no suggestion first from B & W that Hall was barred from a patent on his scratcher by the Thomas Kelley use, is that correct?

* * *

A. I recall no discussion involving the Thomas Kelley use—is that correct?

Q. Yes, the Thomas Kelley use. Had there, up to [1637] the time of this conference which Wright and Decker attended here in September of 1947, been any suggestion by B & W that a patent was barred Hall on his scratcher because of a prior use performed by the Union Oil Company at the Jones and Berdine tests in November and December, 1939?

A. I do not recall any such contention prior to the September, 1947, meeting with Mr. Wright and Mr. Decker.

(Deposition of Leslie W. Vollmer.)

Q. Now, except as your memorandum indicates, there was no representation or discussion concerning the Hall advertising in 1941 being a bar to Hall obtaining a patent?

* * *

A. I recall no such claim.

Q. Did either Mr. Wright or Mr. Decker at this meeting indicate why they thought B & W was entitled to make this Hall-type scratcher?

A. As I recall their contention at that meeting, they believed that they had been the leaders in the development of wall cleaning equipment and methods of using such equipment, and that they were entitled to consideration as leaders; and they made the further statement that there were no existing patents that would prevent [1638] them from producing a type of scratcher that would be more acceptable to us if we did not desire to use the regular B & W wall cleaning guide.

Q. Do you know why it was that the wall cleaning guide was not acceptable to the Gulf Oil Company or to the Gulf Research & Development?

* * *

A. After examining the devices available for scratching oil wells, it was the opinion of our engineers collectively that the scratcher offered by the Weatherford Company would accomplish the objectives that we desired better than would the wall cleaning guide offered by B & W, because the wires extended to a greater diameter than the wires of the standard or regular B & W wall cleaning guide, and because we were of the opinion that the wires of the

(Deposition of Leslie W. Vollmer.)

Weatherford scratcher would suffer least damage in usage so their effectiveness would persist for a longer period of time and thereby more nearly assure a satisfactory result.

Q. Did this acceptance have anything to do with [1639] the manner in which the wires extended from the collar, that is, whether they extended radially or nonradially?

* * *

A. Yes, it did.

Q. Can you explain why?

* * *

A. The principal objection to the B & W wall cleaning guide was the restricted path of wire movement, which appeared to be predominantly in a direction parallel to the axis of the pipe on which the device was mounted. Any flexing of the wires in, shall we say, a circumferential direction—yes, in a circumferential direction—resulted in a permanent deformation of the bristle so that it did not extend to the diameter of the original scratcher—that is, of the scratcher before deformation. In the case of the B & W scratcher, the wires appeared to —or had a more universal action and could be flexed in almost any direction without equally serious deformation, or deformation as serious as the B & W guide.

(The last answer was read.)

The Witness: May I change that? I made [1640] a misstatement.

(Deposition of Leslie W. Vollmer.)

Q. (By Mr. Scofield): Indicate where the change should be, please.

A. I am trying to figure—— (To the reporter): Will you change "In the case of the B & W scratcher" to "In the case of the Weatherford scratcher." In the case of the Weatherford scratcher, the wire had a more universal action and could be moved in almost any direction without serious deformation resulting.

* * *

Q. Were the Hall-type scratchers sent you by Wright in June, 1947, ever purchased by Gulf——

A. No. [1641]

* * *

A. We did not purchase the scratcher that was submitted to us in the middle of 1947. I would like to correct my previous answer to that.

Q. To your knowledge, was there any change made in the type of B & W scratchers which were being offered, or did they add to their line in any regard?

A. At a later date, B & W offered a scratcher which was called the Nu-Coil Scratcher, for our consideration.

Q. Now, before they offered the Nu-Coil type scratcher, was there any other type scratcher that was offered to Gulf, other than the wall cleaning guide? A. Yes.

Q. What was that?

A. It was a scratcher known as the Multi-Flex Scratcher.

(Deposition of Leslie W. Vollmer.)

Q. Can you fix the date when the Multi-Flex, the B & W Multi-Flex type scratcher was offered to Gulf, from your files? [1642] A. Yes.

Q. Would you please do so?

(The witness referred to papers.)

Mr. Lyon: October 10, 1947.

The Witness: Was it October 10?

Mr. Lyon: October 10, 1947. I believe that is what you are looking for.

Mr. Scofield: That's right.

A. At the September, 1947, conference, arrangements were made with Mr. Wright to send us regular B & W wall cleaning guides with 3½-inch bristles and B & W wall cleaning guides with 5½-inch bristles for laboratory testing prior to field trials of the B & W equipment. In a letter dated October 10, 1947, from Mr. Wright to me, Mr. Wright advised that these scratchers were being shipped and further stated that he was also shipping six of his new scratchers which were to be marketed under the name of Multi-Flex Scratchers.

Q. Was this letter written to you?

A. Yes.

Q. Do you recall having received the Multi-Flex scratchers from Mr. Wright? A. Yes.

Q. Describe, if you will, briefly, what the structural features of the Multi-Flex scratcher were.

* * *

A. The Multi-Flex scratcher submitted was es-

(Deposition of Leslie W. Vollmer.)

sentially a cylindrical body on which were disposed scratching elements in the form of bundles of small wires located on the periphery of the cylindrical body in such a way that they were disposed on the cylindrical body at an angle, pointing—how shall I put it?—at an angle pointing upward and in a nonradial fashion.

Q. I put before you two photographs which I request the reporter to mark for identification as Applicant's Exhibits 45 and 45-A for identification, and ask you whether or not you can identify the object which is shown in those photographs. The perspective is Exhibit No. 45; the perspective view is to be marked Applicant's Exhibit No. 45, and the plan view as Applicant's Exhibit No. 45-A.

(Applicant's Exhibits Nos. 45 and 45-A for identification were marked.)

Q. (By Mr. Scofield): I ask you if you can identify that (handing to witness). [1644]

A. The scratchers shown in Exhibits 45 and 45-A appear to be the same as those submitted by Mr. Wright under his letter dated October 10.

Q. 1947?

A. 1947, that's right. October 10, 1947.

Q. What was done with these scratchers after they were received by you?

A. These scratchers were used for laboratory tests, which were primarily intended to demonstrate relative durability of scratching equipment.

(Deposition of Leslie W. Vollmer.)

Q. Would you explain briefly how these laboratory tests are conducted?

* * *

A. The scratchers were mounted on a length of 5½-inch casing, after which they were inserted into a casing assembly composed of 9 and ⅝-inch casing, in which recesses of larger diameter were located. The purpose of the larger recesses was to provide points at which the bristles of the scratcher might catch as they would in the rough formation very frequently encountered [1645] in a drilled oil well, and they were moved back and forth in the 9 and ⅝-inch casing assembly a prescribed number of times and then removed to observe the extent to which the bristles had suffered permanent deformation from their original positions.

Q. When was this test made by Gulf Research?

A. These tests were made the latter part of 1947 and the first part of 1948.

Q. You have indicated that the tests were made in a 9 and ⅝-inch casing, which had portions of larger diameter? A. Yes.

Q. Did the casing also have portions of smaller diameter?

Mr. Lyon: Objected to as leading.

A. The outside diameter of the casing was 9 and ⅝ inches; the inside diameter, of course, was less than that because of the wall thickness of the pipe.

Q. Does your test indicate what the inside diameter was?

A. The inside diameter was 8.835 inches and

(Deposition of Leslie W. Vollmer.)

did not become smaller at any point in the test assembly.

Q. Does your test indicate what was the outside diameter of the scratcher, the Multi-Flex scratcher?

A. The outside diameters of the scratchers tested [1646] were determined before and after testing in the test assembly.

Q. What was the outside diameter before the test?

A. There were several different sizes of outside diameter involved in the several scratchers tested.

Q. Would you give me the diameters of those tested?

A. I don't think they were ever listed—The original diameter of the Multi-Flex scratchers utilized was 14 inches; the original diameter of the two types of B & W standard wall cleaning guides was 12 inches in one instance and 15 inches in the other.

Q. So the record will be accurate——

A. Weatherford standard scratchers were also included in the tests. The original diameter of the Weatherford scratcher was 15 inches.

Q. So the record will be accurate and show the conditions of the tests, won't you, Mr. Vollmer, state what diameter pipe the Multi-Flex 14- and 15-inch scratchers were run in first, or whatever the diameters of the Multi-Flex were, that were run? I may not have stated the diameter accurately. [1647]

* * *

(Deposition of Leslie W. Vollmer.)

A. All of the tests were made in the same test assembly, which was previously described, being 9 and 5/8-inch casing having an internal diameter of 8.835 inches.

Q. And what was the diameter, now, of the Multi-Flex that was run in that casing? Was it 14 inches?

Mr. Lyon: Same objection.

A. Yes.

Q. And the wall cleaning guides were 12 inches and 14 inches in diameter, outside diameter?

A. Yes.

Q. And the Weatherford was 15 inches in diameter? A. Right.

Q. When Mr. Wright sent on these Multi-Flex scratchers in October, 1947, did he advise or indicate why he thought B & W was entitled to make a scratcher having the structure with nonradial wires?

Mr. Lyon: That is objected to as absolutely immaterial.

A. I have not recently read the entire letter from Mr. Wright dated October 10, 1947, and beyond the statements relating to the shipment of the scratchers requested and the inclusion of the Multi-Flex scratchers, I don't recall what was in the letter.

Q. Won't you read into the record—Do you have the letter before you? [1648] A. Yes.

Q. Won't you read into the record at this time such statements as Wright made in the letter per-

(Deposition of Leslie W. Vollmer.)

taining to the Multi-Flex scratchers which he was sending on?

Mr. Lyon: That is objected to as absolutely immaterial.

A. The fourth paragraph of Mr. Wright's letter of October 10, 1947, is as follows: "In addition, we are shipping in the same crate six of our new scratchers, which are to be marketed under the name of Multi-Flex Scratchers. The wire can be flexed in so many different directions that we believe the word 'Multi-Flex' is extremely suitable. One of the scratchers is split to illustrate this model.

"The price of these scratchers will be identical with our present model and we expect to go into full scale manufacture of these next week, and as rapidly as supplies can be built up, they will be available to the trade at the various distribution points."

That is the end of the next paragraph. New paragraph:

"The shipment of the equipment requested by your order was delayed in order to include this Multi-Flex type scratcher in the shipment, and we would greatly appreciate your comments and criticisms and would like [1649] to have you test them under the conditions you outline in your letter of September 15. We would further like some report or photographs, if you take them, of the equipment after it has been through the tests mentioned above."

Do you want all references——

(Deposition of Leslie W. Vollmer.)

Q. Yes, all references to the Multi-Flex that appeared in this letter, yes.

* * *

A. The next paragraphs are general statements relating to the behavior of scratchers, and the fifth paragraph on page 2 of the letter reads as follows: "The first field tests with our Multi-Flex scratcher here in California gave success in a different condition, where the operation had enlarged a section of the hole, making a so-called pocket for cement. The hole was enlarged from 10 and 5/8-inch to 15-inch diameter, and 7-inch casing was set in it. No caliper was run, so no information is obtainable on actual diameter."

The next is a long paragraph describing its usage. [1650] Do you wish to include that?

Q. No. What I am primarily interested in is whether, in this letter, there is any indication from Wright why he was entitled to make the Multi-Flex scratcher which you say had the nonradial wires.

* * *

A. I see no reference to that particular point in the letter. It appears to be concerned entirely with the technical aspects of scratchers.

Q. Now, at any other time, did Wright indicate to you why B & W, Inc., were entitled to make this nonradial type scratcher?

* * *

A. I do not recall specific occasions, but I do recall that there were references made several times to the general effect that there were no existing

(Deposition of Leslie W. Vollmer.)

patents on scratchers with nonradial bristles which would prevent them from ultilizing a nonradial disposition of the wires on scratchers.

Q. Did Wright indicate to you at the time or about the time that he sent on these Multi-Flex scratchers, that he was the originator of the nonradial type [1651] scratcher?

Mr. Lyon: That is objected to.

A. I don't recall any specific contentions to that effect.

* * *

Q. When the Multi-Flex scratchers were sent on to Gulf Research in October, 1947, did Wright or anyone connected with B & W indicate to you that Hall would not get a patent on nonradial scratchers because he was barred by the Thomas Kelley use in California in 1939?

* * *

A. No, I don't recall that he did.

Q. Did Wright or any representative of B & W indicate [1652] that at the time the Multi-Flex scratchers were sent on to Gulf Research, that Hall was barred from obtaining a patent covering the nonradial type scratcher by the Jones and Berdine use which was performed by the Union Oil Company in Dominguez Hill in November and December of 1939?

Mr. Lyon: Same objection as to that question.

A. I don't recall any specific contention to that effect.

Q. After the tests were run on the Multi-Flex

(Deposition of Leslie W. Vollmer.)

scratchers, have you any knowledge as to whether or not your company, that is, the Gulf Oil Company, used these scratchers in conditioning any of their wells?

A. Yes. There were a number of trials in our operations in the Gulf coast area to determine their utility under actual operating conditions.

Q. Now, to your knowledge, was there any other change made by B & W in the scratcher that they were offering to the trade and to the Gulf Oil Corporation, besides this Multi-Flex scratcher which was sent on to you in October, 1947?

A. Do you mean any development at the time that these scratchers were——

Q. Development after that time.

A. Yes, there was. [1653]

Q. What was the next change or tool that they offered to the trade, to your knowledge—of the scratcher type, I mean.

* * *

A. The next development of B & W that I am aware of was the so-called Nu-Coil scratcher.

Q. Can you fix the date when you first had knowledge of the B & W Nu-Coil?

A. I believe that my first knowledge of the B & W Nu-Coil scratcher was about the time of the annual A. P. I. meeting in Chicago, which would be November, 1947. No, wait; that isn't right. November, 1948. However, I believe that can be established with certainty, with accuracy, from our records.

Q. Won't you look at your records and see

(Deposition of Leslie W. Vollmer.)

whether or not you have fixed that date accurately? If it will expedite your search of your files, I will call to your attention that on page 52 of Mr. Houghton's deposition, there was reference to a letter dated November 28, 1949, which Dr. Foote wrote to Mr. Houghton with regard to [1654] these scratchers? A. What was the date, again?

Q. November 28, 1949.

(The witness referred to papers.)

A. Yes, here we are. Apparently I was in error as to the year involved with the Nu-Coil scratcher development, and my first knowledge of it was at an A. P. I. meeting in Chicago. The first knowledge that I had of the Nu-Coil scratcher was in the early part of November, 1949.

Q. Did you personally write this letter that was signed by Dr. Foote, dated November 28, 1949, which was addressed to Mr. Houghton?

A. Yes, I did.

Q. Briefly narrate the circumstances, as you recall them, concerning this new type of B & W scratcher, which you have indicated was called Nu-Coil. A. Would you repeat that?

(The pending question was read.)

A. I recall having a meeting with Mr. Wright and Mr. Barkis in Chicago the early part of November, 1949, at which time they informed me that they were about to begin, or may have already started, production of a Nu-Coil type of scratcher, and I think that at that time they may have had a

(Deposition of Leslie W. Vollmer.)

model of the scratcher, and certainly [1655] photographs. But in any event I knew in a general sort of a way at that time what its construction was, and I think—well, a subsequent examination of a Nu-Coil scratcher led us to believe that at least from a casual inspection, it was essentially the same as the Weatherford type of scratcher, at least from the standpoint of the service that it would perform.

Q. Were specimens of this B & W Nu-Coil scratcher furnished to you?

A. I believe that they were.

Q. How did the structure of the scratcher differ from the Multiflex, if it did?

* * *

A. As I recall it, the only real difference observed between the two types of scratchers was in the method of attaching the wire bristles and associated coil springs on the inside of the scratcher body.

Q. How were the scratcher wires attached to the body in the Nu-Coil?

A. I don't believe I can recall the essential difference between the two, at the present [1656] time.

Q. You don't recall the essential differences between the Nu-Coil and the Multi-Flex?

A. No. I just remember that they were not, as I recall it, attached exactly in the same manner as the Weatherford bristles are attached.

Q. Well, was the Nu-Coil wire a bundle of wires,

(Deposition of Leslie W. Vollmer.)

a single wire, or just how were the wires arranged with respect to the collar in the Nu-Coil?

* * *

A. The Nu-Coil scratcher was comprised of individual wires or bristles with a coiled section located close to the point of attachment to the body of the scratcher, and they extended in nonradial fashion—that is, the bristles extended in a nonradial fashion from the body of the scratcher.

Mr. Scofield: I request that the reporter mark the photograph I am submitting to the witness as Applicant's Exhibit No. 46 for identification.

(Applicant's Exhibit No. 46 for identification was marked.)

Mr. Scofield: The second photograph, I request be marked as Applicant's Exhibit No. 46-A for identification. [1657]

(Applicant's Exhibit No. 46-A for identification was marked.)

Q. (By Mr. Scofield): I put before you, Mr. Vollmer, two photographs, one marked Applicant's Exhibit No. 46 and the other marked Applicant's Exhibit No. 46-A, and ask you if you can identify them (handing to witness)?

A. The scratchers depicted in Exhibits 46 and 46-A appear to be the same as those that were offered to us as the Nu-Coil scratcher of B & W.

Q. Did B & W furnish you with specimens of this Nu-Coil type scratcher?

* * *

(Deposition of Leslie W. Vollmer.)

A. Yes, I believe so.

Q. For what purpose?

* * *

A. For the purpose of examination by us, with the expectations or the hopes that we would approve them for use in our cementing operations.

Q. Did you have any part in testing these scratchers for the company? [1658]

* * *

A. We made no actual laboratory tests on this particular scratcher.

Q. What was the occasion of this letter that you wrote to Mr. Houghton on November 28, 1949?

A. The purpose of communicating with Mr. Houghton on the occasion referred to was to inform him about the Nu-Coil scratcher development and to ask for his views on the advisability of utilizing the scratcher in our cementing operations.

* * *

Q. I put before you a photostat of the letter dated November 28, 1949, and I would like to have you compare it with the copy in your file and state whether or not it is an accurate reproduction of the letter (handing to witness)?

A. Yes; it is an accurate reproduction of the letter dated November 28, 1949, to Mr. Houghton from Dr. Foote, but which was written by me.

Q. Is there attached to that letter a set of claims —that is, to the photostat that I have submitted to you? [1659]

A. There is attached to the submitted photostat

(Deposition of Leslie W. Vollmer.)

a list which, without reading them in detail, appears to be claims.

Q. And is there a set of claims attached to the letter in your file?

Mr. Lyon: Is there a question now before the witness?

A. I am just making certain that the letter carries an indication that there is an attachment of claims to it, and I can now answer by saying yes, there is a list of claims attached to that letter in our file.

Q. Will you compare the list of claims of the photostat and see whether or not it is an accurate reproduction of the claims that appear attached to the letter in your file?

* * *

A. The attachment to the photostat copy of the letter submitted to me does not appear to be an exact replica of the attachment to the same letter in my files, but the substance of the two attachments appears to be the same. [1660]

Mr. Scofield: It is requested that the letter of November 28, 1949, which is a two-page letter, be marked as Applicant's Exhibit No. 47, and that the page of claims attached to the letter be marked as Applicant's Exhibit 47-A. I should like to have the photostat marked.

(Applicant's Exhibits Nos. 47 and 47-A for identification were marked.)

* * *

Mr. Scofield: I now offer the letter, the two-

(Deposition of Leslie W. Vollmer.)

page letter dated November 28, 1949, and the page of claims attached, as Applicant's Exhibits 47 and 47-A.

* * *

Q. Would you now like to make a statement on the record, Mr. Vollmer, with respect to the comparison that you made of the photostat and the letter in your file?

A. I would like to make a statement by way of explanation concerning the time that may be taken in establishing a certain point that may come up in a question. I write hundreds of letters on a wide variety [1661] of subjects and I don't profess to recall in detail every word that I may have said in any single letter, and when I am asked a specific question relating to a letter that is some three or four years old, I must resort to the records to establish exactly what was said in that letter and to make certain that the attachments that may be referred to were actually part of a given letter.

Q. At the time these Nu-Coil scratchers were furnished to Gulf Research in November of 1949, did Mr. Wright indicate to you why he thought his company had the right to make a scratcher of this type?

Mr. Lyon: That is objected to as entirely immaterial.

A. I don't recall any specific occasion on which he may have made such a statement, but it is my recollection that he had contended consistently that there was no reason why he could not produce a scratcher of the Nu-Coil type.

(Deposition of Leslie W. Vollmer.)

Q. Did he indicate that this sidewise bristle or angularly disposed bristle was his invention?

Mr. Lyon: That is objected to as entirely immaterial.

A. I don't recall that he ever made such a statement. [1662]

Q. Did he ever indicate to you on any occasion that the reason that his company was entitled to make this type scratcher, that is, the Nu-Coil type, was that the patent on such scratcher was barred to Hall by the Thomas Kelley use in California in 1939?

Mr. Lyon: That is objected to as absolutely immaterial.

A. No, I don't recall any reference to the Thomas Kelley use on the date specified.

Q. Did Mr. Wright ever indicate to you at any time that his company, B & W, Inc., was entitled to make the Nu-Coil type of scratcher because Hall was barred from getting a patent by the use, a public use, which had been performed by the Union Oil Company in California, in November and December of 1939, where his scratchers were tested in tests now known as the Jones and Berdine tests?

Mr. Lyon: Same objection.

A. I can't recall any specific statement to that effect.

Q. Did Mr. Wright ever tell you, on any occasion, that his company was entitled to make the Nu-Coil type scratcher because Hall was barred from getting a patent on this type of scratcher due to the fact that Hall had published in the Oil Weekly and in the Oil and Gas [1663] Journal ad-

(Deposition of Leslie W. Vollmer.)

vertisements which would bar him from getting a patent?

Mr. Lyon: Same objection.

A. Yes, I recall that such a statement was made at the time of the conference; I believe it was September, 1947.

Q. Was that with respect to the Nu-Coil type scratcher? A. No.

Q. Were you at any time advised that Hall had obtained claims from the Patent Office that covered the structure of the Weatherford type scratcher?

A. Would you repeat that, please?

(The pending question was read.)

A. Yes, I believe we were.

Q. Do you know when that was?

A. I don't recall the exact date, but it's possible that our files would establish the approximate time, at least, that we became aware of such claims.

Q. Was it before or after the B & W, Inc., had furnished you with a Nu-Coil type scratcher?

A. I am uncertain of the time element involved in this question, but I have a recollection that it may have been about the time that the Nu-Coil scratcher was [1664] being offered.

Q. Did you ever have knowledge of the fact that these claims that were allowed to Hall were in interference with an application of Wright in the Patent Office?

* * *

Q. Did you attend a conference that was held in Pittsburgh on August 20, 1951, when Mr. Settle,

(Deposition of Leslie W. Vollmer.)

Mr. Wescott, Mr. Vollmer, and Mr. Littlehales and Mr. Houghton were present? A. Yes, I did.

Q. Do you recall whether at that time, this interference between Hall and Wright was [1665] discussed?

* * *

A. As I recall that conference, there was considerable discussion about the entire controversy, during which it is almost certain that all of the features of the controversy known to Mr. Houghton were discussed.

Q. And you were present at that conference?

A. Yes. [1666]

* * *

Q. Did Wright ever tell you in the conversations that you have had with him since the interference was set up, that the invention belonged to him and not to Hall?

* * *

A. By "the invention," do you mean the Weatherford type scratcher? [1667]

Q. Yes, the invention of using nonradial bristles on the collar of a scratcher.

A. No, I do not recall his ever having made a statement to that effect.

Q. After the interference was instituted by the Patent Office, in any conversation you had with Wright, did Wright tell you that Hall would not be able to get a patent after the interference was terminated because of the prior use at the Thomas Kelley well in California in 1939?

* * *

(Deposition of Leslie W. Vollmer.)

A. I recall no such statement by Mr. Wright.

Q. Did Mr. Wright ever tell you during the pendency of that interference, that it would be impossible for Hall to obtain a patent because of the Jones and Berdine public use——

Mr. Lyon: Same objection.

Q. (By Mr. Scofield): ——that had been carried out by the Union Oil Company in 1939 in Dominguez Hill?

A. I don't recall any such statement.

Q. In connection with that interference and any discussion that you ever had with Wright, did he bring up the matter of the Hall advertising in 1941 and its [1668] bearing upon this interference that he was having with Mr. Hall?

* * *

A. I believe that in the course of numerous prior discussions, the matter of advertising and dates of advertising and so forth did enter the discussion on the basis of establishing uses of scratching equipment in the cementing of oil wells.

Q. Did you ever discuss with Wright this Hall advertisement in connection with the interference that was going on between Hall and Wright?

A. I don't recall any such discussion.

Q. Did Mr. Wright ever tell you why the interference was terminated?

A. No, I don't remember his ever doing so.

Q. In connection with your work here at Gulf Research, did you ever have any knowledge of patents issued to Wright in Canada, covering——

(Deposition of Leslie W. Vollmer.)

Mr. Lyon: That is objected to——

Q. (By Mr. Scofield): ——covering scratchers—— [1669]

* * *

A. Yes. I did become aware of a patent issue to Mr. Wright in Canada, relating to scratchers and the use of scratchers, I believe.

Q. How did you obtain the knowledge with regard to this Wright patent that was issued in Canada? [1670]

* * *

A. I don't recall the exact circumstances under which we were advised, but it is my impression that we obtained that information in the normal course of events through Mr. Houghton's office.

Q. I show you a copy of Canadian Patent 463822, issued to B & W, Inc., on March 21, 1950, and ask you if you can identify that patent (handing to witness).

Mr. Lyon: That is objected to, as it is entirely immaterial whether he can identify it or not, or whether or not there was any such patent issued.

A. I think this is similar to the Canadian patents that were sent to us by Mr. Houghton's office.

Q. Were you advised at a later time as to whether or not that patent was reissued?

* * *

A. I don't recall a specific occasion when that was so, but I do recall that we were informed by Mr. Houghton's office of the patent developments in Canada relating to scratchers and well cementing methods.

(Deposition of Leslie W. Vollmer.)

Q. Did you ever discuss either of these Canadian patents with Mr. Wright?

Mr. Lyon: Objected to as immaterial. [1671]

A. I don't recall any discussion of these Canadian patents with Mr. Wright. [1672]

* * *

Q. I put before you, Mr. Vollmer, a drawing which is marked B & W scratcher, Exhibit L (handing to witness). Did B & W, Inc., or Mr. Wright on any occasion ever submit to you or, to your knowledge, to the Gulf Research, a scratcher of the wall cleaning guide type such as shown there (indicating) with angularly disposed bristles or wires as shown in this drawing?

* * *

A. Not to my knowledge.

Q. Did anyone in the B & W organization ever indicate to you or state that the concept of using nonradial wires on the scratcher originated with Wright? [1674]

* * *

A. I don't recall any such statement.

Mr. Scofield: I would like to offer at this time the photographs which the witness identified. I first offer the two photographs that were marked for identification as Applicant's Exhibits 44 and 44-A.

* * *

Mr. Scofield: I offer also the two photographs that have been marked for identification during this witness' examination as Applicant's Exhibits 45 and 45-A.

* * *

(Deposition of Leslie W. Vollmer.)

Mr. Scofield: And I likewise offer the two photographs that have been marked for identification as Applicant's Exhibits 46 and 46-A. [1675]

* * *

Cross-Examination

By Mr. Lyon: [1676]

* * *

Q. Does your correspondence indicate, or have you any memorandum in your correspondence of a visit by Mr. Jesse E. Hall, Sr., to the Gulf Research & Development Company on July 28, 29 or 30, 1947, upon his return from what is referred to as his second visit to Venezuela?

A. I believe there is some indication in our correspondence.

Q. What is the indication?

A. I will have to locate it. (Referring to papers): According to my file, there is an indication that Mr. J. E. Hall visited us on July 31, 1947.

Q. What is that indication? What is that indication contained in?

A. That indication is contained in a letter addressed to Mr. J. E. Hall, Sr., dated August [1677] 28, 1947, from Dr. Paul D. Foote.

Q. Dated August 28, did you say?

A. August 28.

Q. Who wrote that letter?

A. That letter was written by me for Dr. Foote's signature. That was August 28, 1947.

Mr. Lyon: I will ask that the letter so identi-

(Deposition of Leslie W. Vollmer.)

fied by the witness, or a photostatic copy of the same, be received in evidence as Petitioner's Exhibit 4-E. [1678]

* * *

Q. Have you any other letters in the record which would establish any other visit by Mr. Hall at about that period of time, between June 30, 1947, and the end of 1947, with respect to scratchers?

A. Before I can answer that question with authority, it will be necessary for me to leaf through the file that we have for that period of time. I have not had time to do so since you expressed your desire for such information yesterday.

Q. All right. Will you do so?

(The witness referred to files.)

Q. (By Mr. Lyon): You have reviewed the correspondence file?

A. Yes, sir, I have, from the 1st of June, 1947, to December 31, 1947. [1681]

Q. And what have you found?

A. I found two additional references to visits by Mr. Hall.

Q. And of what date were those?

A. The dates are contained in a letter dated July 30, 1947, to Mr. Houghton from Dr. Foote, but written by me.

Q. And the other one?

A. And the other one is contained in a letter dated December 5, 1947, to Mr. Houghton from Dr. Foote, but written by me.

Q. All right. Now, the subject matter of this

(Deposition of Leslie W. Vollmer.)

letter of December 5, 1947, is the Nu-Coil—I mean, the Multi-Flex Scratcher, and that letter refers to a conference had with reference to the Multi-Flex Scratcher with Mr. J. E. Hall, Sr., and one of the other Halls, I believe, at which it was asserted that the Multi-Flex Scratcher would constitute a violation of some of the rights of J. E. Hall, Sr.? That is true, is it not?

A. You are referring to the letter of December——

Q. December 5, 1947. There is only one Hall referred to. That was Mr. Jesse Hall, Sr., was it not? [1682] A. Yes.

Q. You wrote the letter? A. Yes.

Q. Now, as far as you knew at that time, had the Multi-Flex scratcher been offered for sale to anyone?

Mr. Scofield: That is objected to. The witness hasn't been qualified to know whether this Multi-Flex scratcher was offered——

Mr. Lyon: As far as he knew, was my only question.

A. I have knowledge only of the offer made to Gulf Oil Corporation.

Q. It was being offered to them at that time, was it? A. I believe so, yes.

Q. Now, this Multi-Flex scratcher was sent to you with a letter of Mr. Wright of October 10, 1947, was it not? It has already been identified.

A. I think that is right, yes.

Q. When, between October 10, 1947, and De-

(Deposition of Leslie W. Vollmer.)

cember 5, 1947, had you discussed the matter of B & W's Multi-Flex scratcher with Mr. Jesse Hall, Sr.? Do your records show that?

(The pending question was read.) [1683]

A. I don't believe we have any record of the exact date of Mr. Hall's visit.

Q. Similarly, after the receipt by you on July 24, 1947, when I believe you will find a letter written to B & W acknowledging receipt of the two coil type stud B & W Multi-Flex scratchers—pardon me, B & W coil type scratchers, was it before you discussed the receipt of those scratchers with Mr. Hall? Do your records show that? In that connection, I might call your attention to a statement made in a deposition taken of Mr. Houghton, which reads as follows, reading on page 25——

Mr. Scofield: What Houghton deposition is this?

Mr. Lyon: This is the Houghton deposition that is in the record as Exhibit 4-E.

Q. (By Mr. Lyon): I call your attention to this deposition, beginning on page 25 where it says—and this was Mr. Scofield speaking: "Well, if you have no record of the conference, do you have any recollection of a phone call that was made to you at the time of the conference?" That is the wrong one; pardon me. That is the wrong one. That is not the right one. It's the other phone call. In [1684] that deposition, I first call your attention to the testimony of Mr. Houghton with reference to the letter of July 24, 1947.

Mr. Scofield: What page?

(Deposition of Leslie W. Vollmer.)

Q. (By Mr. Lyon): Which appears on page 27 of the Houghton deposition, Exhibit 4-E, that deposition having been taken of Mr. Houghton on January 9, 1950, at Washington, D. C., in which it is stated: "Only by receipt of a letter Dr. Wescott wrote to Mr. Wright on July 24, 1947, in which he says, 'This will acknowledge your letter of June 30, 1947, with which was transmitted two specimens of your coil spring wire type wall cleaning guides.' " You have such a letter in front of you, have you?

A. Yes.

Mr. Scofield: That is objected to as indefinite.

Q. (By Mr. Lyon): Now, that is the conversation which I was referring to, and what I was trying to call to your attention was the conversation of Mr. Scofield in this examination, asking Mr. Houghton the following question—— [1685]

Mr. Scofield: What page?

Mr. Lyon: Page 28.

Q. (By Mr. Lyon): "Do you recall whether or not you had any work"—and I believe that should be "word"—"from me about this time, along July 29 or 30, with regard to those two coil type scratchers that Mr. Wright had sent to Mr. Wescott?"

And Mr. Houghton said, "Yes, I did." And then he continues: "You called me on the phone and seemed to be highly excited, because you appeared to be under the impression that Gulf was buying or considering buying scratcher equipment from B & W, and you gave me to understand in no unmistakable terms that you were not going to stand

(Deposition of Leslie W. Vollmer.)

for it and that you were going to sue Gulf Oil Corporation or Gulf Research & Development Company. And I recall distinctly, I said, 'What in the blank are you going to sue on?' because I did not know that you had any patent at the time upon which you could base a suit."

Will that refresh your recollection in answering the previous question about a contact with Mr. Hall or Mr. Scofield after receipt by the Gulf Research & Development Company of the two [1686] spring coil type inside stud mounted scratchers from B & W, as shown by the letter, the Gulf Research letter of July 24, 1947?

A. I don't see that the statements made by Mr. Houghton in his deposition referring to a telephone conversation with Mr. Hall would serve in any way——

Q. That is with respect to a conversation with Mr. Scofield, not Mr. Hall, that reference in the deposition. A. What did I say?

Q. You said "Mr. Hall."

> (Mr. Vollmer's previous answer was read as follows: "Answer: I don't see that the statements made by Mr. Houghton in his deposition referring to a telephone conversation with Mr. Hall would serve in any way——")

A. ——referring to a telephone conversation with Mr. Scofield would serve to establish a date of a visit to us by Mr. Hall on or about July 24, 1947.

(Deposition of Leslie W. Vollmer.)

Q. Well, I am pinpointing the time by that, so that you might refer to your records.

A. I have been through my records here from June 1 to December 31, 1947, for references to visits by Mr. Hall, and I have already recited the [1687] only references I found.

Q. I see; and that is all you have been able to find? Now, does this incident recall to your mind this submission of these coil spring, spring coil type inside stud mounted scratchers of B & W to the Weatherford Spring Company or Mr. Hall or to Mr. Scofield?

A. I don't get that question, I'm afraid. I would like it repeated, please.

(The pending question was read.)

A. How did submission of B & W stud type scratchers to Weatherford and Hall get into this? I still don't understand the question.

Q. I am just asking you if the record that I referred to refreshes your recollection in any way as to whether or not you did make such a submission of these two scratchers to Mr. Hall or to Weatherford or to any representative of Weatherford? A. You hadn't asked that question.

Q. That is what I meant to ask right now.

A. I can assure you that the scratchers submitted under Mr. Wright's letter of June 30 were not submitted to anyone. They were sent to us for our examination and were retained by us until we were requested by Mr. Wright, I believe it was, to [1688] return them to him at a later date.

(Deposition of Leslie W. Vollmer.)

Q. That is all you ever did to them?

A. That's right.

Q. You never showed them to anyone at any time?

* * *

A. There were letters written within our organization concerning the scratchers and the use of the type of scratchers submitted under Mr. Wright's letter of June 30.

Q. To whom were those letters written?

A. They were written to Mr. Houghton, to our Purchasing Department and to our various [1689] production division offices. [1690]

* * *

Q. Mr. Vollmer, when do your records show that you first became cognizant of or received a copy of the Jones and Berdine report made to the A.P.I.?

A. My first recollection of any matter relating to the Jones and Berdine was in a compilation submitted to us, I believe, by either Mr. Wright or Mr. Barkis. It can be established by our records.

* * *

A. I am not certain whether it was '46 or '47, but the date can be established.

Q. It was before any tests were made by the Gulf of any kind of a scratcher, wasn't it?

A. The communication that I have reference to was some time after we had made rather extensive field tests in conjunction with our project on casing cementing.

Q. On those tests that were made in southern

(Deposition of Leslie W. Vollmer.)

Louisiana, I believe, did the Gulf test only one scratcher, and that was the Weatherford [1693] scratcher?

A. I believe—It is my recollection that virtually all of our initial experimental work was limited to one type of equipment.

Q. And your answer to the question is yes, is it not? A. Yes.

Q. Now, until you tested, as the records show here, in the latter part of 1947, some of the B & W scratchers, you had never tested any other type of scratcher, is that correct?

* * *

A. I don't recall any other tests on any others. I don't recall any other tests on any type of scratchers.

Q. And it was as a result of these tests that were made in 1946 in southern Louisiana, that the Gulf standardized on the Weatherford scratcher, was it not?

A. I don't believe that we can say that we standardized on any particular scratcher. We were developing a new technique, which had just been tried out, and there was no intent on our part to say that [1694] the development work was complete and that no further work would be done [1695] upon it.

* * *

Q. Was there ever any consideration given at any time to the scratchers that were submitted by Mr. Wright with his letter of June 30, 1947, at any meeting at which you were present, or with any

(Deposition of Leslie W. Vollmer.)

party, after the September 9, 1947, conference was held, which has been referred to?

A. I don't recall any meeting.

Q. So you don't ever recall ever having them discussed again, do you?

A. Oh, they were, I am certain; they were occasionally mentioned among ourselves in discussing the general situation, but I have no recollection on any specific occasion of such a discussion.

Q. There was nothing ever done with those scratchers by the Gulf except to return them to Mr. Wright upon his demand? A. That's right.

Q. And no other scratchers like those scratchers, or in which the coil wires were mounted upon the inside of the collar, were ever submitted to Gulf, were they, to your knowledge?

A. Not to my knowledge. [1697]

* * *

DEPOSITION OF A. J. TEPLITZ

called for the purposes of giving testimony on behalf of the Applicant, Respondent, having first been sworn by the Notary Public in attendance, deposes and says:

Direct Examination

By Mr. Scofield:

Q. Please state your name.

A. A. J. Teplitz.

Q. Where do you reside?

A. In Penn Township, Allegheny County. [1699]

Q. What is your age? A. Fifty-two.

(Deposition of A. J. Teplitz.)

Q. What is your educational background?

A. I graduated from the University of Kansas, B.S. degree in chemical engineering, and subsequently took a number of years of graduate work at the University of Pittsburgh in chemistry.

A. And how have you been employed since you left school, Mr. Teplitz?

A. First with the National Cement Company at Ragland, Alabama; then at the Marland Oil Company in Ponca City, Oklahoma; and since then, by Gulf, first at the Mellon Institute and then at the Laboratory.

Q. The Gulf Research?

A. The Gulf Research & Development Laboratory, yes.

Q. How long have you been here at the Gulf Research & Development Laboratory?

A. How long have I been employed by Gulf Research?

Q. Yes. A. Since December, 1929.

Q. Have you been there at the Laboratories all the time?

A. I was at the Mellon Institute and then [1700] at the Laboratories, with a few absences away in the field.

Q. You have heard Mr. Vollmer testify yesterday that sometime in 1945, Gulf made a project of well conditioning or cementing?

A. I believe he said earlier than 1945.

Q. When was it?

A. In 1943, I believe it was.

(Deposition of A. J. Teplitz.)

Q. Did you take any part in that?

A. Yes, I did.

Q. What was the part that you played in that project?

A. Well, I was assigned to work with the Gulf Coast District, the Houston Division at that time, as the representative of the Laboratory on this study of cementing.

Q. Did that start in 1943? A. Yes.

Q. Who assigned you to that duty?

A. My supervisor and the head of the department, also, who was Dr. Wescott at the time.

Q. Were you then employed with the Mellon Institute or were you here at the Gulf Research?

A. I was at the Gulf Research.

Q. Just what were your actual duties in [1701] connection with this project which Gulf had on cementing?

A. It was first started on the squeeze cementing. Some experimental work had been outlined and I was to observe the field results on the experimental program.

Q. What do you mean by "squeeze cementing"?

A. Jobs done to repair primary cementing; failures in sealing off undesirable fluids in wells. That was the main thing.

Q. And was this project the cementing of the well bore surrounding the casing?

A. Repairs to the cementing of the well bore, yes.

Q. Was your work in the field or in the laboratory, in and around Houston?

(Deposition of A. J. Teplitz.)

A. In Houston; it was practically all in the field.

Q. I would like to have you explain briefly, if you will, just how you went about this work there in Houston that you have indicated started sometime in 1943, and tell me, for the record, or explain what the Gulf was attempting to do or correct, whether there was some difficulty that they were experiencing. [1702]

* * *

A. The program was to get substantially every bit of information we could on the mechanics of squeezing, and in order to do it, it was decided first to take a well at the time the casing was to be set, and determine all we could about the disposition of that cement behind the casing, and the cementing was done in the conventional manner. Then, on the subsequent production of those, perforation and production of those wells, in the event they did not produce pipeline oil, they would require squeezing, and we introduced radioactive material into the cement to determine the disposition of that squeeze cement, to determine how that disposed itself around the well bore during the squeezing operation.

Q. Were you having difficulty obtaining pipeline oil in these wells on the Gulf coast?

A. This was in the Mississippi delta area and they were having a great deal of trouble. Every well had to be squeezed at least once, and sometimes many more times.

Q. What was the difficulty with the wells, that

(Deposition of A. J. Teplitz.)

they didn't produce pipeline oil? Was there some contamination of some sort?

A. They apparently had communication with the [1703] zones that contained the extraneous fluids, yes.

Q. Now, do scratchers come into this project in any way? A. Subsequently.

Q. Just explain how scratchers played the part that they did in this development or project.

A. Well, as a result of this work, it was learned that the cause of all of the difficulties, the cause was the imperfections in the primary cementing of the casing.

Q. What do you mean by "primary cementing"?

A. That is the first job when the casing is set. It was then decided to try to do something about improving that primary casing cement job. We had several ideas in mind on methods of improving the job, that were not exactly mechanical in nature, but we had heard about scratchers and decided to look into those before we went to any other method of improving that job.

Q. Now, from whom had you heard about scratchers?

A. Well, earlier I had seen some work done by Jones and Berdine, and I had heard from some of our engineers in the Houston office about these devices, and decided to look into them.

Q. Now, whom did you contact in this connection? [1704]

(Deposition of A. J. Teplitz.)

A. I contacted the B & W people in Houston.

Q. When was that done?

A. That was about the 1st of February in 1946.

Q. And whom in the B & W organization did you get in touch with, then?

A. I called by phone to their office in the M & M Building, as I recall, and talked to a representative of theirs, whose name I am not sure of, but subsequently Mr. Wright came to see me and we discussed the matter.

Q. When did you see Wright for the first time?

A. That was, I believe, in the same month, in February.

Q. February, 1946? A. 1946, yes.

Q. Where did you talk to him?

A. At luncheon in the Houston Club.

Q. Did he help you at all with regard to the use of scratchers in connection with the work that you were doing on squeeze cementing?

A. Well, our discussion had to do with the primary cementing of the casing.

Q. Describe or explain, if you will, Mr. Teplitz, just what your discussion was with Mr. Wright in February, 1946, at the Houston Club. [1705]

A. He described the technique that they had been using with the B & W wall cleaning guide, which consisted of placing these appliances on the casing opposite the producing zones in wells and reciprocating the pipe during the cementing operation, during a part of it.

Q. Were you familiar with the wall cleaning

(Deposition of A. J. Teplitz.)

guide that he was explaining to you?

A. I had seen pictures of it.

Q. Did he do anything further with regard to describing or explaining the use of these guides, by taking you out on a rig or in a well?

A. No, he did not.

Q. Well, did he follow up in any way after the first meeting that you had?

A. Possibly by phone. I don't recall anything else—no personal meeting.

Q. Did you at that time obtain any of these wall cleaning guides from B & W and do any work with them, in connection with this project that you were working on? A. No, we did not.

Q. Why didn't you?

A. Well, at that time the field people on the whole were very reluctant to try any device to put on [1706] the outside casing. They all felt it was a hard enough job to get the casing into the well without attaching something to the outside to restrict the clearances, and we were just in the process of considering these things and we had not made any definite plans to try the equipment.

Q. Did you do anything further with respect to scratchers after you had talked to Mr. Wright and gotten his views with regard to the use of these wall cleaning guides? What was the next thing you did?

A. Well, I must explain that our program was going along simultaneously; we were still following the cementing of casing and collecting a background

(Deposition of A. J. Teplitz.)

of information, so we weren't idle. We were continuing the work, but we hadn't—at that time, we didn't make any definite plans for testing these scratchers.

Q. And you hadn't used any scratchers on the casing up to that time? A. No.

Q. About when was that?

A. I don't understand.

Q. About when was it that you were continuing to do this work but had not as yet used any scratchers? Was it after you talked to Mr. Wright? [1707]

A. Yes.

Q. How long did you continue on your research work or development work before you again investigated the scratcher situation?

A. Well, shortly thereafter, probably in the next month or so, a member——

Q. That is, sometime in March of 1946?

A. March, yes. A member of the Weatherford Spring organization came to see me and discussed his method of using their own equipment.

Q. Who was that from the Weatherford Spring? A. That was John Hall.

Q. What did you do next with respect to this project?

A. Well, following that discussion with John Hall, I was considerably impressed with the technique that he described, and I went to see Mr. Hubbard of the Gulf organization in Houston, who was more or less directing this program, and explained to him what I had learned and what my impressions

(Deposition of A. J. Teplitz.)

were, and although reluctant to try the method, he said we might talk about it with the superintendent, who at that time was Mr. Clemons. And after considerable discussion, it was decided to try this equipment on the well in southern Louisiana. [1708]

Q. Did you personally go on this particular job where this method was tried? A. Yes, I did.

Q. Who was with you on the job?

Mr. Lyon: That is objected to as entirely immaterial. It is an interesting story, but what it has to do with any of the issues—what was done in 1946, prior use occurring before November, 1945, and fraud occurring prior to that time—is without possible explanation.

A. On this particular job, Mr. J. E. Hall, Sr., and another Mr. Hall, who I understood was his cousin, were present; also, Mr. Hassebroek of the Halliburton Oil Well Cementing Company, who were cooperating with us in this program, in addition to the usual field men of the Gulf organization.

Q. And did you use this technique on this particular well that you mentioned?

Mr. Lyon: Same objection.

A. Yes.

Q. What did you do after that?

A. Well, the results on this particular oil well were so outstanding that we decided to give the technique further trials, and in fairly rapid succession, we did just that. We went along from one oil [1709] well to another using the technique.

Q. There in Louisiana?

(Deposition of A. J. Teplitz.)

A. Yes, and then later it was used in other localities.

Q. And over what period of time did this continue?

A. By that, you mean the study program?

Q. Yes.

A. Well, in a sense it has continued even up to the present time, I would say.

Q. Now, after this work in Louisiana, where next did you continue the work?

Mr. Lyon: That is objected to as absolutely immaterial.

A. In Mississippi.

Q. And when was that?

A. That was about the middle of 1946.

Q. When did you next contact Mr. Wright, or when did he contact you?

A. He contacted me shortly after I had given a paper at the A.P.I. meeting in Shreveport, Louisiana.

Q. Can you fix the date a little more accurately?

A. The paper was given, as I recall, about May 17 or 18 of 1946, and I saw Mr. Wright, I would say, within the next three or four weeks after that paper was given. [1710]

Q. What was the occasion of this meeting with Mr. Wright sometime in September of 1946?

A. The meeting in September of '46? I said within two or three weeks after I gave this paper, which was in May.

Q. I beg your pardon.

(Deposition of A. J. Teplitz.)

A. This was about June.

Q. 1946. What was the occasion of that meeting?

A. Mr. Wright asked me to accompany him to luncheon, at which time he wanted to discuss some of the paper which I had given at that time.

Q. Anything else?

A. That was the occasion.

Q. Where was the meeting held?

A. At the Houston Club.

Q. Did he again offer you the B & W scratchers or the B & W wall cleaning guides?

A. Yes, he did.

Q. Did you do anything about that at that time or thereafter, and by "doing anything about that," I mean, did you try any of his tools in any of your wells?

A. When you say "thereafter," how long a period do you mean?

Q. Well, did you do it within the next six [1711] months? A. No.

Q. When did you first try out, if you did, any of these wall cleaning guides in one of the Gulf wells?

A. We didn't. We didn't try any of those original wall cleaning guides.

Q. Why didn't you? Didn't he ask you to?

A. Yes, but we had had such success with the other equipment that, naturally, we were reluctant to deviate from that method we had been using.

Q. Now, how long did you continue to use solely

(Deposition of A. J. Teplitz.)

the Weatherford equipment until you tried out the B & W equipment?

Mr. Lyon: That is objected to as immaterial.

A. I will have to correct a statement that I just made in saying that we never used the regular wall cleaning guide of B & W, because in 1947, when we went to Venezuela, because of a shortage of Weatherford equipment, of the scratchers, we did install a few of those, or the engineers had installed a few of the B & W wall cleaning guides in conjunction with some Weatherford centralizers on one casing job.

Q. In Venezulea? A. Yes.

Q. Was Mr. Wright with you down there?

A. No, he wasn't. [1712]

Q. Were you on the job where these B & W wall cleaning guides were run? A. Yes.

Q. In Venezuela? A. Yes.

Q. And was that the first time that you had tried the B & W equipment? A. Yes.

Q. Did you continue to use it in Venezuela?

A. No. Shortly thereafter, some of the Weatherford equipment arrived and we returned to the use of that equipment.

Q. About when was that?

A. That was in March and April of 1947.

Q. When did you come back from Venezuela?

A. About the 1st of May, 1947.

Q. Did you meet Mr. Wright at any time in 1947 after you returned from Venezuela?

(Deposition of A. J. Teplitz.)

A. Yes. I met him at a meeting here in Pittsburgh.

Q. Where was that meeting held?

A. It was held here at the Laboratory.

Q. And who was at the meeting?

A. As I recall, it was Mr. Vollmer, Dr. Wescott, Dr. Kennedy, Mr. Wright and Mr. Barkis. [1713]

Q. What was the meeting about? Give me first the date of the meeting. About when was it held?

A. I would have to check on that date. I heard the testimony yesterday and I believe Mr. Vollmer fixed that date at about June, in the middle of June somewhere.

Q. That was the meeting that he referred to, June 17, here in Pittsburgh? A. Yes.

Mr. Lyon: Objected to as leading.

Q. (By Mr. Scofield): And why were you meeting here at Pittsburgh with the B & W people?

Mr. Lyon: Objected to as absolutely immaterial.

A. They had written to the company here saying——

Mr. Lyon: Just a moment. We object to the testimony and contents. The letter itself is the best evidence.

Q. (By Mr. Scofield): Go ahead and give your recollection.

A. B & W had written to the Gulf Research stating that the method that we had been using in Venezuela was an infringement of their method, using an excessive amount of material, and they

(Deposition of A. J. Teplitz.)

wanted to talk the matter over with the [1714] company.

Mr. Lyon: I move to strike the statement of the witness as not the best evidence.

Q. (By Mr. Scofield): Describe fully your recollection of what transpired at that meeting, and the conversation, what the conversation covered.

A. As I recall, the conversation covered the Wright method patent and included discussions to the effect that B & W equipment could be used equally well, and that they would be able to provide a new type of scratcher to overcome our original objections to some—what we thought were imperfections—not imperfections, but improper design of the B & W wall cleaning guide.

Q. What was the wall cleaning guide they were offering you at that time?

A. The original equipment which they had discussed with me originally.

Q. That is, the equipment which Mr. Wright had discussed with you at these meetings in the Houston Club? A. Yes.

Q. Did you see here yesterday the photographs that were offered as Exhibits 44 and 44-A (handing to witness)? [1715] A. Yes, I did.

Q. Is that the type of equipment they were offering you in the way of scratchers?

A. Yes, it was.

Q. Now, on the occasion of this meeting in June of 1947, did Mr. Wright at that time call your at-

(Deposition of A. J. Teplitz.)

tention to the work that had been done at the Jones and Berdine tests?

Mr. Lyon: That is objected to as absolutely immaterial. The witness stated he knew about it long before Mr. Wright ever approached him.

Q. (By Mr. Scofield): Answer the question.

A. To my recollection, he did not.

Q. Now, when Mr. Wright mentioned on the previous occasion the Jones and Berdine tests, did he put before you the cuts or the report that Mr. Jones had made on the test? Did he call your attention to the scratcher that is shown here in Figure 14, with the double back wires, and state that had been tested by Jones and Berdine and that after the tests had been made, that he had replaced that type of scratcher with the straight radial type of scratchers?

Mr. Lyon: That is objected to as a compound, complex [1716] question, and contrary to fact, and incompetent, irrelevant and immaterial.

A. I don't believe he placed before me any such picture.

Q. Didn't he describe to you the tests that were made by Jones and Berdine?

A. That is at what time?

Q. At any time prior to this meeting in June of 1947.

A. Sometime along there, he had mentioned them, but they were not described in any detail.

Q. Didn't he tell you that they had tested the

(Deposition of A. J. Teplitz.)

Jones and Berdine wall cleaning guide of the type that is shown in this Exhibit G, with the turn-back ends of the wires, and that after those tests had been made by Jones and Berdine, that they had adopted the radial wires as being the true equivalent of the scratchers that are shown in that figure?

* * *

A. I don't recall that he mentioned those things specifically, but that he had used equipment of this type in the Jones and Berdine tests.

Q. Didn't he call your attention to this [1717] scratcher, or this wall cleaning guide that is shown here in Exhibit I, where the ends of the wires were bent over and small round balls put on the ends of the wires, and didn't he state to you that those had been tested by Jones and Berdine and that now they had used—that now they had replaced those scratchers that had been tested by Jones and Berdine, with his wall cleaning guides?

* * *

A. I don't recall this mention of these balls on the end of the wires.

Q. Do you recall of any scratcher that Wright said was tested by Jones and Berdine, or any wall cleaning guide that had been tested by Jones and Berdine?

* * *

A. To my recollection, he mentioned that in the Jones and Berdine tests, that scratchers of the type that he was offering had been used.

Q. Then he did say that he was now offering the

(Deposition of A. J. Teplitz.)

same scratchers that were used in the Jones and Berdine tests, did he not? [1718]

* * *

A. As I recall, he mentioned scratchers of that type were being—that he was offering——

Q. What do you mean by "that type"?

A. Of his regular wall cleaning guide with the radial wires.

* * *

Q. What is your recollection of what Wright told you about these Jones and Berdine tests, if he told you anything about them?

A. As I say, that is a long time back, and I can't recall specifically what he said, except that he mentioned briefly these Jones and Berdine tests and that a scratcher of his type had been used in those tests.

Q. What do you mean by "a scratcher of his type"?

A. The B & W wall cleaning guide that he was offering; or something that wasn't very far [1719] removed from his wall cleaning guide.

Q. Didn't he tell you that in the Jones and Berdine tests, they had tested a wall cleaning guide that had sidewise or angularly disposed bristles?

* * *

A. Not that I recall.

Q. Didn't he tell you that at the Jones and Berdine tests, that these wall cleaning guides with these angularly disposed bristles were rotatively mounted on the casing, and when the pipe was re-

(Deposition of A. J. Teplitz.)

ciprocated, that the wires were relieved and that the collar rotated to relieve the wires?

* * *

A. I don't recall any such statement.

Q. Did Wright tell you that he had filed an application for a patent covering the work that was done by Jones and Berdine?

* * *

A. I don't believe he ever mentioned that his patent covered the work done by Jones and [1720] Berdine.

Q. Now, at this meeting in June of 1947, did you indicate to him what type of scratchers you wanted to use—that is, the Gulf, in connection with their work on cementing?

A. Well, I wouldn't have been authorized to make such a statement as that. As I recall, all I had to do with the meeting was describe some of the results we had had, and that was about as far as my part in it went.

Q. What were the results that you described, or that you had?

A. These results showing that we had had very successful completions with the Weatherford scratchers and centralizers.

Q. And did you tell Mr. Wright and Mr. Barkis at this meeting that you were ready to adopt their wall cleaning guides and use them, as well as the Weatherford equipment?

A. As I say, I was in no position to make such a statement. I had no authority of that sort. All

(Deposition of A. J. Teplitz.)

my job was, was to make the observations and to report on the results. [1721]

* * *

Q. Now, at this meeting in June of 1947, was this contract between Hall and Wright discussed?

A. I believe it was. [1722]

* * *

Q. Do you recall that Mr. Wright, on the occasion of that meeting in June of 1947, brought up the matter of the Thomas Kelley use in which B & W had used these angularly disposed wall cleaning guides in a well in California, which he called McMillan Community No. 1?

* * *

A. No. Yesterday was the first time that [1723] I had ever heard of that.

Q. Yesterday was the first time you heard about that Thomas Kelley well? A. Yes.

Q. Didn't Wright suggest to you at that meeting that the work done by Jones and Berdine on his wall cleaning guides was a bar and that it would prevent Hall from ever obtaining a patent on these angularly disposed bristles?

* * *

A. I don't recall any indication of that sort.

Q. Now, did Wright say at that meeting that you had in June of 1947, that these Hall applications or any of them were fraudulently [1724] filed?

* * *

A. Not to my knowledge.

* * *

(Deposition of A. J. Teplitz.)

Q. Was there any discussion at all at this meeting with respect to fraud in any of these Hall applications?

* * *

A. I don't recall any discussion of that [1725] sort.

* * *

Q. Do you know whether the Gulf Research & Development made any tests upon the Multi-Flex scratcher? [1726]

* * *

A. Yes, they did.

* * *

Q. Can you give me, approximately, the date when these jobs were run?

A. The east Texas jobs were done in late February and early March of 1948, and the southern Louisiana jobs were done about the middle of that year, about June.

Q. Let's consider first the jobs that were done in east Texas in February and March of 1948. Were you actually on the rigs when these scratchers were [1727] run? A. Yes, I was. [1728]

* * *

Q. Were the abrading wires of these Multi-Flex scratchers radially extending from the collar, or did they extend at an angularly disposed——

Mr. Lyon: That is objected to as entirely immaterial.

A. They were angularly disposed.

Q. Did either Wright or Barkis ever indicate

(Deposition of A. J. Teplitz.)

to you that these angularly-disposed bristles were the same as the bristles that were on the wall cleaning guides that had been tested by Jones and Berdine?

* * *

A. No, they did not. [1729]

Q. Did either Wright or Barkis ever indicate to you that these angularly disposed bristles of the Multi-Flex scratchers were the same that they had supplied to the Thomas Kelley well in 1939 in California?

* * *

A. No, they did not so indicate.

Q. Did either Wright or Barkis indicate to you that the wires used, the angularly-disposed wires used on these Multi-Flex scratchers were the same that had been supplied to Thomas Kelley as shown in this Exhibit L that I put before you (handing to witness)?

* * *

A. No, they did not.

Q. Did you ever see that drawing, Exhibit L, before, on any occasion?

A. Not to my recollection.

Q. Did you ever see a wall cleaning guide with angularly-disposed wires as shown in that drawing? [1730]

* * *

A. No, I have not ever seen that. [1731]

* * *

Q. Did either Wright or Barkis at that time, at the time of this meeting in June, 1947, say that

(Deposition of A. J. Teplitz.)

although under this contract they had given an exclusive [1732] license, that due to the fact that these Hall applications were fraudulently filed, that the license didn't mean anything?

* * *

A. To my recollection, no such statement was made.

Q. Now, when you were on these east Texas wells, on these two wells in east Texas in February and March of 1947, do you recall that Mr. Barkis on any occasion took the Multi-Flex wire scratcher and twirled it on the pipe and said, "Teplitz, when this goes into the well and this casing is reciprocated, why, these wires are relieved by rotation of this collar." Do you recall any such conversation as that with Mr. Barkis?

* * *

A. To my recollection, he never indicated that the scratchers would rotate.

Q. Who was on the well in southern Louisiana in June of 1948 with you? [1733]

* * *

A. Mr. Barkis.

Q. And were you again using Multi-Flex scratchers?

* * *

A. Yes, we were.

Q. Now, on the occasion—were you both out on the well while the scratchers were being run?

A. Yes, we were.

Q. On that occasion, did Mr. Barkis at any time

(Deposition of A. J. Teplitz.)

twirl these scratchers on the casing and say, "Teplitz, that is the way these things rotate when this pipe is reciprocated"?

* * *

A. Rotation wasn't a subject of discussion.

Q. Wasn't it ever a subject of discussion between you and Barkis——

* * *

Q. ——in any of these wells where you were with him when Multi-Flex scratchers were used?

* * *

A. Not to my recollection.

Q. Now, didn't Wright tell you in connection with [1734] the use of these wall cleaning guides, that they rotated when the pipe was reciprocated?

* * *

A. No, he did not.

Q. Did he ever mention that to you on any occasion? A. Not to my recollection.

Q. Do you know whether or not any further change was made or any different type of B & W scratcher was offered, after the Multi-Flex——

* * *

A. Yes, the Nu-Coil scratcher.

Q. When did that come out?

A. I first saw it in October of 1948 in the office of Mr. Hubbard in Houston, Texas.

Q. Had Mr. Hubbard been furnished one of these scratchers, the Nu-Coil type?

A. Mr. Barkis was there with it, had just brought it in, and Mr. Hubbard called me in to come and look at it.

(Deposition of A. J. Teplitz.)

Q. Did you discuss the scratcher with [1735] Barkis at that time?

A. Just a very brief——

Q. What did you say?

A. As I recall it, Mr. Hubbard asked me what I thought of that scratcher, and I replied that I thought it would be all right, that it was practically the same as the Weatherford scratcher.

Q. How did the wires extend from the collar?

* * *

A. They extended in the manner similar to the Weatherford——

Q. Were they radial or nonradial?

A. Nonradial. [1736]

* * *

Q. They sent you some of these scratchers, didn't they, these Nu-Coil—— A. Yes.

Q. And then didn't Wright come down here to get the approval of them in the middle of 1950?

A. Yes, he was here on one occasion, as I recall.

Q. When was that meeting? [1737]

* * *

A. As I recall it, that was in August of 1950.

Q. Where was the meeting held?

A. In the office of the Purchasing Department in downtown Pittsburgh.

Q. Who was present?

A. Mr. Wright, Mr. Bock——

Q. You might identify these men as you go along. Who is Mr. Bock?

A. He was at that time Purchasing Director of

(Deposition of A. J. Teplitz.)

the Gulf Oil Corporation. And Mr. Averell, who was a purchasing agent, Mr. Brockett, who is Assistant to the Vice-President, and myself.

Q. What was the discussion that was had at this meeting, as you recall?

* * *

A. As I recall, the discussion had to do with the purchases of B & W equipment by Gulf, and Mr. Wright expressed some concern as to why more of their equipment wasn't being used in Venezuela.

Q. Is that all?

A. Well, that was the main topic of discussion—it was a rather stormy session. That was what the discussion was concerned with. [1738]

Q. At that meeting, was the Nu-Coil scratcher discussed?

* * *

A. Yes, it was.

Q. Was the possibility of Hall getting a patent on this Nu-Coil scratcher, or covering the Nu-Coil structure, taken into account?

* * *

A. Yes, it was.

Q. What was the discussion about that?

Mr. Lyon: Objected to as immaterial.

A. Well, Mr. Wright and I became involved in a slight argument there——

Q. About scratchers?

A. About the whole technique in general.

Q. What was the discussion, as you recall it?

A. Well, as I recall, Mr. Wright felt that they

(Deposition of A. J. Teplitz.)

should have more business, because they had shown us the methods, had described to us the technique of using these devices; and I said, I made the statement that the technique we were using was not what he described and that apparently our use of the nonradial type of scratcher—that the [1739] value of such use had been borne out by the fact that they were, themselves, resorting to a similar type device.

Q. Did Wright at that time tell you that the reason that they were able to make this nonradial-type scratcher was because these applications of Hall were fraudulently filed and that Hall would never obtain a patent?

* * *

A. No, he didn't make any such statement.

Q. Hasn't he ever suggested to you on any occasion that any one of these Hall applications was fraudulently filed and, as a consequence, Hall would be unable to get a patent on this nonradial scratcher?

* * *

A. I don't recall any such statement.

Q. Now, at this meeting, when you were discussing this Nu-Coil scratcher, didn't Wright tell you at that time that Hall was never going to be able to get a patent because of the prior uses that he had outstanding, that is, the uses that had been practiced on his wall cleaning guides in California in [1740] 1939?

* * *

(Deposition of A. J. Teplitz.)

A. I don't recall any such statement.

Q. Didn't he mention during that meeting anything about this Kelley use, on this Community McMillan No. 1 Well, when these angularly disposed wall cleaning guides were used?

A. No, he did not.

* * *

Q. Do you have any recollection that at that meeting he brought up the fact that the work of Jones and Berdine was a complete bar to Hall's obtaining a patent on these nonradial-type scratchers?

* * *

A. I don't believe that was discussed.

Q. Was yesterday the first time you ever heard of this Kelley use, yesterday when I was examining Mr. [1741] Vollmer?

* * *

A. To my recollection, it is.

Q. Was the first time that you ever heard of Wright relying upon the public use of Jones and Berdine, when it came into this matter yesterday, or on some other occasion, do you recall?

* * *

Q. Do you recall whether or not he ever suggested to you that the Jones and Berdine work was a bar to Hall's obtaining a patent on nonradial scratchers?

* * *

A. I don't believe I ever have heard this previously.

(Deposition of A. J. Teplitz.)

Q. What was the first time you ever heard of this fraud proposition——

* * *

Q. ——that these applications of Hall, or [1742] any of them, were fraudulently filed?

* * *

Q. When did you hear of it for the first time?

A. During these depositions. [1743]

* * *

Q. Are you familiar with any tests that were made by the Gulf Research on either the Weatherford [1746] or the B & W scratchers, that were made here in the Laboratory and about which Mr. Vollmer testified yesterday?

* * *

A. Yes, I am.

Q. Did you take any part in those tests?

* * *

A. Yes.

Q. I put before you a photograph which is a plan view of a test cylinder, and on that test cylinder is positioned a scratcher (indicating). The relative diameters of the cylinder and the scratcher are shown in the photograph, and the photograph has been offered as Applicant's Exhibit 30. I would like—in the tests that were made in California, this scratcher was reciprocated in that test cylinder. I would like to have you give your opinion as to whether or not the relative diameters there shown in the photograph would give a proper test of the reversibility of that scratcher shown. [1747]

* * *

(Deposition of A. J. Teplitz.)

A. You want my opinion?

Q. Your opinion as to whether or not you would get a proper test as to the reversibility of that scratcher.

* * *

A. The dimensions aren't stated here, what—you are just talking about the relative dimensions?

Q. The photograph indicates the relative diameters of the cylinder and the outside diameter of the scratcher, does it not? A. Yes.

Q. What are your views as to whether or not that would give a proper test as to the reversibility of that scratcher?

* * *

A. Well, as I would put it, I would want a lesser clearance to make a good test.

Q. What do you mean by "lesser clearance"?

A. Between the scratcher and the cylinder I would want something smaller than that to make a good test of the reversibility.

Q. Do you mean that the cylinder should [1748] be smaller or the diameter of the scratcher larger, or just what do you mean by that "lesser clearance" that you indicated in your last answer?

A. That the wires would have a shorter space to work in.

Q. Do you mean by that, that the cylinder should be of smaller diameter?

* * *

A. In my opinion, for a thorough test of the re-

(Deposition of A. J. Teplitz.)

versibility, I would want a smaller cylinder there, yes.

Q. I would like to ask the same question as to the scratcher shown in Exhibit 31 (handing to witness).

* * *

A. My same comment applies to this exhibit.

Q. And that is, that the cylinder should be of a smaller diameter so as——

* * *

Q. ——to give it a proper test? [1749]

A. What I would consider a proper test, yes.

Mr. Scofield: That is all the direct examination I have.

Cross-Examination

By Mr. Lyon:

Q. Isn't it a fact, Mr. Teplitz, that when you first talked to Mr. Wright concerning the matter of well completions since 1945, that Mr. Wright discussed with you at that time fully the Jones and Berdine report?

A. I don't believe I had met Mr. Wright in 1945.

Q. Is your answer the same for February of 1946? I said '45, but I was in error.

A. I don't recall that it was a full discussion. It is my recollection that it was a rather brief discussion of that work, with most of the time being spent on his own work, some work of his own.

(Deposition of A. J. Teplitz.)

Q. Including an article on casing movement while cementing, that he presented to you at that time?

A. He did discuss that paper of his, which was, as I recall, published in a foreign journal.

Q. Now, how long prior to this time in February of 1946 was it that you had obtained a copy of the [1750] Jones and Berdine report?

A. It was just about the beginning of this cementing research in '43. I had seen it in the A.P.I. Drilling and Production Practice.

Q. And from whom did you obtain a copy of the report? A. It was in our library.

Q. It was already in the library?

A. Yes. [1751]

* * *

Q. In this job that you did in 1947, or that you attended the working of in 1947, in Venezuela, where B & W scratchers were used, was a successful cementing job obtained?

A. As far as I could tell, it was.

Q. Could you tell from the results obtained in that well any difference between the results obtained with the use of B & W wall cleaning guides and Weatherford equipment in Venezuela?

A. No.

Q. Did you mean to imply by looking at these photographs that were presented to you, Exhibits 30 and 31, that a test would not be obtained in the use of the apparatus shown in those photographs

(Deposition of A. J. Teplitz.)

as to the reversibility of the scratchers shown in these photographs?

A. My thought there is that they wouldn't show the reversibility; they wouldn't be a test. It would [1754] not be indicative of how they behaved in the well. [1755]

* * *

Q. And those are the scratchers that were used in a well in Venezuela in 1947?

A. That's right.

Q. And in that well that was cemented, you could [1759] tell no difference between the results obtained in the cementing of that well or any well that was cemented with Weatherford scratchers?

A. No.

Q. And that is the only well experience you have had with wall cleaning guides, isn't that true?

A. That is the only personal experience I have had with wall cleaning guides.

Q. Now, you know, do you not, that wall cleaning guides are still sold?

A. I didn't know that, no.

Q. You didn't know that? A. No.

Q. You didn't know that some of your competitors are still buying wall cleaning guides in preference to all other forms of scratchers?

A. I have no knowledge of it. I haven't made any inquiry and I have no knowledge.

* * *

Q. Weren't you also present in San Tome,

(Deposition of A. J. Teplitz.)

where Mr. Wright was directing the running of B & W wall cleaning guides—B & W scratchers in a well there?

A. The B & W scratchers in a well at San Tome? [1760]

Q. Yes. A. Yes, I was.

Q. When was that?

A. That was about the 1st of December of last year.

Q. 1952? A. Yes.

Q. Do you know what the results of that operation in Venezuela were? A. Yes, I do.

Q. Was it a successful cementing job?

A. No, it wasn't. [1761]

* * *

Q. Did you witness any tests that were made on scratchers in Pincher Creek in the Canadian field?

* * *

Q. What was the relative size, outside diameter, of the scratchers used in that test and the size of the [1762] well bore, if you recall?

A. It was five inch O.D. liner run in a 6⅛ inch hole.

Mr. Lyon: Six and what?

The Witness: One-eighth hole.

Q. (By Mr. Scofield): Five inch O.D. liner in a 6⅛ inch hole. What was the outside diameter of the scratchers that were used in that test?

A. You mean, of the collars?

Q. Well, the outside diameter of——

(Deposition of Mr. A. J. Teplitz.)

A. The wires?

Q. Yes; of the scratchers themselves.

A. As I recall, those had about 3½ inch bristles, I believe. I have forgotten now. I would have to check the records on that, to see whether they were the bristles, but they were either—the over-all outside diameter would be something in the order of 12 or 15 inches.

Q. About twice the size of the hole?

A. That's right.

Q. And would you consider that a proper test for the reversibility of scratchers? [1763]

* * *

Q. Strike the question. Have you ever made tests to determine whether radial wire scratchers would rotate during reciprocation?

* * *

A. Yes, I have.

Q. And what has been your conclusion from the test? [1765]

* * *

A. There weren't very exhaustive tests, but simple tests on the surface, and indicated that there was very little, practically no rotation in the radial wire scratchers. [1766]

* * *

The Court: Exhibit DDD.

Mr. L. E. Lyon: It is one of the Patent Office petitions with respect to the No. 55,619 application, petition to strike that application.

The Court: Is it stipulated to be a true copy of what it purports to be?

Mr. Scofield: I am checking, your Honor, to see

whether or not it isn't already in the record.

Mr. L. E. Lyon: No, it isn't.

The Court: What is the date of that petition?

Mr. L. E. Lyon: Do we have Exhibit DDD available, Mr. Clerk?

Mr. Scofield: It is already in the record, your Honor, as Plaintiff's Exhibits 133 and 134, a petition to strike the Hall application and a renewed petition to strike. I believe that is one of these.

Mr. L. E. Lyon: No. This is the one dealing with the petition to strike that application because of the petition to make the application special which was not one of the exhibits.

The Court: Exhibits 133 and 134 apparently deal with Application No. 55,619, among others.

Mr. Scofield: That is right.

The Court: As apparently does Exhibit DDD for identification. [1771]

Mr. L. E. Lyon: This is a separate petition, your Honor, to strike that application on other grounds.

The Court: Will you accept Mr. Lyon's statement as to this, Mr. Scofield?

Mr. L. E. Lyon: He has the exhibit in front of him now.

Mr. Scofield: I am just looking at it [1772] now.

The Court: I notice that EEE for identification is apparently a reply by Mr. Scofield to the Petition to Strike which is Exhibit DDD for identification.

Mr. Scofield: That is apparently a different petition. I have no objection to that.

The Court: Very well. Is it stipulated to be a true copy?

Mr. Scofield: Yes.

The Court: Is it offered in evidence? Is Exhibit DDD for identification offered in evidence?

Mr. L. E. Lyon: Yes, your Honor. Pardon me.

The Court: Received in evidence.

(The document referred to, and marked Defendants' Exhibit DDD and received in evidence.)

The Court: Exhibit EEE for identification, is it stipulated to be a true copy?

Mr. L. E. Lyon: Yes, as far as I am concerned. Yes.

Mr. Scofield: I will stipulate to that.

The Court: Do you offer it in evidence?

Mr. L. E. Lyon: FFF is already in evidence.

The Court: Is the Exhibit EEE offered?

Mr. L. E. Lyon: Yes, your Honor.

The Court: Received in evidence.

Mr. L. E. Lyon: Pardon me. [1773]

(The document referred to, and marked Defendants' Exhibit EEE, was received in evidence.)

The Court: GGG is next, apparently is the Oil Weekly of June 30 of 1947, Weatherford Spring Company advertisement, page 81. Is it stipulated to be a true copy?

Mr. Scofield: That is stipulated to be a true copy.

The Court: And that the Weatherford Spring Company caused the advertisement to be placed?

Mr. Scofield: I so stipulate.

Mr. L. E. Lyon: I will offer it in evidence.

The Court: Received in evidence.

(The document referred to, and marked Defendants' Exhibit GGG, was received in evidence.)

The Court: Exhibit JJJ appears to be the so-called $2.50 royalty letter written by Mr. Scofield on January 12, 1952. Is it stipulated to be a true copy?

Mr. Scofield: Yes, sir.

Mr. L. E. Lyon: I will offer it in evidence.

The Court: And it was sent on or about that date?

Mr. Scofield: Yes, sir.

Mr. L. E. Lyon: In that regard, your Honor, I have requested in the oral and written demand filed at the start of this action a list of the parties to whom that letter was sent. I would like to ask that that list be produced at this time and will renew that demand or request. [1774]

Mr. Scofield: I have all of those letters here.

The Court: Do you have a list? What is requested is a list of the persons to whom that letter was addressed and sent, is that correct?

Mr. L. E. Lyon: Yes, your Honor, at this time.

Mr. Scofield: I think there is a list in the box, your Honor. We will check that.

Mr. L. E. Lyon: And also, I requested any reply correspondence to be produced that was engendered by that letter in each instance. Perhaps if I had that correspondence to look at it, it would save a

lot of time with respect to the offers, your Honor.

Mr. Scofield: All the correspondence is here, your Honor.

The Court: Shall we proceed?

Mr. L. E. Lyon: Yes, your Honor. They are going to produce it. That can be done and I can take it out at a separate time to look at it first.

The Court: Exhibit JJJ for identification is received in evidence.

Mr. L. E. Lyon: I will offer it in evidence.

The Court: Received.

(The document referred to, and marked Defendants' Exhibit JJJ was received in evidence.)

The Court: Exhibit KKK. Will it be stipulated Exhibit [1775] KKK is a true copy? It is apparently a letter written by Bethelehem Steel Co.

Mr. L. E. Lyon: To B & W with reference to the JJJ correspondence. In fact all of this, continuing right down from this number through SSS, is correspondence which we will offer with respect to correspondence we received from the companies pursuant to Mr. Scofield's letter, Exhibit JJJ.

Mr. Scofield: I have checked those letters. I have seen those letters and I will stipulate as to their genuineness. I object, of course, to the materiality.

The Court: And you stipulate they were sent by the purported senders?

Mr. Scofield: Yes, sir.

The Court: To the addressees, on or about the dates they bear?

Mr. Scofield: Yes, sir; that is correct.

The Court: Very well. The objection is overruled. Exhibit KKK for identification is received in evidence.

Mr. L. E. Lyon: I will offer all those exhibits in evidence, your Honor, that is, KKK and those on the list right straight through SSS.

The Court: Very well. Exhibits KKK for identification, LLL for identification, MMM for identification, NNN for identification, OOO for identification, PPP for identification, QQQ for identification, RRR for identification, and [1776] SSS for identification are now received in evidence.

(The documents referred to, and marked Defendants' Exhibits KKK, LLL, MMM, NNN, OOO, PPP, QQQ, RRR and SSS, were received in evidence.)

The Court: TTT, is it stipulated to be a true copy? It appears to be a letter by Mr. Scofield to the trade relative to this court's injunction of January 26, 1952.

Mr. Scofield: Yes. That letter is duplicated in this box of letters which I am producing here.

The Court: It has not been marked?

Mr. Scofield: No, sir.

Mr. L. E. Lyon: I will offer Exhibit TTT in evidence.

The Court: Received in evidence.

(The document referred to, and marked Defendants' Exhibit TTT, was received in evidence.)

The Court: VVV is apparently the B & W letter on the same subject to the trade. Stipulated to be a true copy?

Mr. Scofield: Yes, sir.

Mr. L. E. Lyon: I will offer Exhibit UUU in evidence.

The Court: Received in evidence.

(The document referred to, and marked Defendants' Exhibit UUU, was received in evidence.)

The Court: VVV.

Mr. L. E. Lyon: This is another one of the letters with respect to the same matter as SSS and the preceding letters with reference to the scope of the $2.50 letter. [1777] It is out of place, VVV.

The Court: Stipulated to be a true copy of the letter from Producers Supply & Tool Co.?

Mr. L. E. Lyon: To B & W.

Mr. Scofield: Stipulate as to its genuineness. Object to its materiality.

The Court: Overruled.

Mr. L. E. Lyon: I will offer VVV in evidence.

The Court: Received in evidence.

(The document referred to, and marked Defendants' Exhibit VVV, was received in evidence.)

Mr. L. E. Lyon: Now, through ZZZ are already in evidence.

The Court: The Four-A's, AAA, copy of B & W indemnification letter sent to the customers follow-

ing the plaintiff's $2.50 demand letter, Exhibit JJJ. Stipulated to be a true copy?

Mr. Scofield: AAAA, your Honor?

The Court: Yes.

Mr. L. E. Lyon: Yes.

Mr. Scofield: Stipulate it to be a true copy.

The Court: And was sent on or about the date it bears?

Mr. Scofield: The same objection as to materiality.

The Court: Overruled. Do you offer it?

Mr. L. E. Lyon: I will offer Exhibit AAAA in evidence. [1778]

The Court: Received in evidence.

(The document referred to, and marked Defendants' Exhibit AAAA, was received in evidence.)

The Court: Exhibit BBBB, partial list of companies to whom indemnification letters AAAA were sent.

Mr. L. E. Lyon: That is by B & W.

The Court: By B & W. Stipulated to be a true list?

Mr. Scofield: As far as I know; that is; I have no way of checking. I haven't seen the correspondence, but——

The Court: Have you seen this exhibit?

Mr. Scofield: I have seen the exhibit.

Mr. L. E. Lyon: The list was prepared——

Mr. Scofield: I think that those indemnification letters should accompany a list, your Honor, the list of them.

Mr. L. E. Lyon: They would only duplicate AAAA, and they were sent out from our office and that list was prepared by my secretary at the time she sent them out.

The Court: Can't you gentlemen agree upon this?

Mr. L. E. Lyon: Will you accept that stipulation?

The Court: It won't be necessary to put them in the record, I shouldn't think, unless you want all the correspondence from the plaintiff.

Mr. Scofield: I think that the correspondence should go in, your Honor. Our correspondence is in here.

The Court: It is not in evidence yet; it has just been [1779] produced.

Mr. Scofield: It has been produced and it evidently will go in evidence. I think that should be in evidence.

The Court: Very well. Will you produce the B & W correspondence?

Mr. L. E. Lyon: Yes, sir; I will produce that entire list and the copies of the letters which are attached to it will show the sending of those indemnification letters. And I will offer at this time Exhibit BBBB.

The Court: BBBB, is there objection to the offer?

Mr. Scofield: With that limitation, I have no objection.

The Court: Received in evidence.

(The document referred to, and marked Defendants' Exhibit BBBB, was received in evidence.)

The Court: I take it there is a stipulation that B & W did send the indemnification letters, Exhibit AAAA, to the companies listed on BBBB just received in evidence, is that correct?

Mr. Scofield: Well, I am willing to so stipulate. There is no stipulation up to now.

Mr. L. E. Lyon: I will accept that stipulation.

The Court: Very well.

Mr. Scofield: And I should like a stipulation from them that we indemnified these companies, as well, in [1780] connection with this.

The Court: The same companies?

Mr. Scofield: Well, many of the oil companies. Some indemnification letters, your Honor, are already in the record; that is, the Gulf and——

The Court: I know. But do you have a list of those to whom you sent them?

Mr. L. E. Lyon: I think it is premature. When we get the list and I see the list, I will offer a stipulation with respect to the list. I think it is premature at this point of the record and would be lost and separated from the list.

Mr. Scofield: I will furnish the list.

The Court: Very well. Exhibit CCCC.

Mr. L. E. Lyon: An indemnification letter sent in response to those letters of July and August of 1950, which are Exhibits, for example, WWW, XXX, YYY, ZZZ on that list that was offered yesterday.

This is a form of indemnification letter and is not responsive to that notice you sent out, Mr. Scofield.

Mr. Scofield: Yes. Of course, I can't stipulate as to that, your Honor, because that is barred by the statute which we have pleaded.

The Court: Will you stipulate, however, it was sent, and that this is a true copy of it, subject to your objection?

Mr. Scofield: Yes, I will do that. And I want to [1781] reserve, of course, my objection.

The Court: As to the admissibility?

Mr. Scofield: Yes, sir.

Mr. L. E. Lyon: We offer Exhibit CCCC in evidence.

The Court: The objection is overruled. Received in evidence.

(The document referred to, and marked Defendants' Exhibit CCCC, was received in evidence.)

The Court: DDDD, Weatherford Oil Tool Company policy letter of March 9, 1951. Is it stipulated to be a true copy?

Mr. Scofield: I will stipulate as to that, your Honor.

Mr. L. E. Lyon: I will offer Exhibit DDDD in evidence.

The Court: Does it show on its face to whom it was sent?

Mr. L. E. Lyon: I would have to see Exhibit DDDD, your Honor.

The Court: Will it be stipulated to whom it was sent?

Mr. Scofield: I have no recollection except as to the letter. As to just what company that was sent, I couldn't say.

The Court: Apparently it is related to the next exhibit EEEE.

Mr. L. E. Lyon: Exhibit DDDD was sent, in this particular instance, to the Coastal Supply Company, P.O. Box 294, Houston 1, Texas. Here is a copy of it. [1782]

The Court: May it be stipulated, if it be a fact, that it was sent by the Weatherford Co. to the customers?

Mr. Scofield: That can be stipulated.

The Court: To its customers on or about that date or to the trade.

Mr. Scofield: It was certainly sent to the Coastal Supply Company.

The Court: With respect to Exhibit EEEE, the letter of May 28, 1951, Weatherford Oil Tool Co., advising of OPA ruling, I take it that is the Office of Price Stabilization?

Mr. L. E. Lyon: That is correct, your Honor.

The Court: With respect to the policy of Exhibit DDDD?

Mr. L. E. Lyon: Yes, your Honor; and both of those were circularized to the trade.

Mr. Scofield: I am willing to stipulate to that, your Honor. I am advised that this letter was sent generally to the trade.

The Court: Does your stipulation embrace both?

Mr. Scofield: DDDD and EEEE.

The Court: And that they are both true copies?

Mr. Scofield: Yes, sir.

Mr. L. E. Lyon: I will offer Exhibits DDDD and EEEE in evidence.

The Court: Both are received in [1783] evidence.

(The documents referred to, and marked Defendants' Exhibits DDDD and EEEE, were received in evidence.)

The Court: FFFF, physical exhibit.

Mr. L. E. Lyon: It is right here.

The Court: B & W wall-cleaning guide, Kelly well type.

Mr. Scofield: No, sir; I won't stipulate as to that.

The Court: Very well. What about the next one?

Mr. Scofield: That is, I will stipulate this: That this FFFF is an exhibit which was prepared very recently but was not a scratcher such as was used on the Kelly well; that is, this is a very recently prepared, manufactured scratcher which they now are offering as having been used on the Kelly well.

Mr. L. E. Lyon: The designation of the exhibit so states. It does not state that it is represented to be one of the ones that were used in the well. Those were cemented in the well.

The Court: Is it supposed to be a replica?

Mr. L. E. Lyon: It is supposed to be a replica, yes, your Honor.

Mr. Scofield: I won't stipulate as to that.

The Court: Very well. What about GGGG?

Mr. L. E. Lyon: That is a log book, your Honor.

Mr. Scofield: I will stipulate as to that, your Honor.

The Court: That it is genuine and in all [1784] respects what it purports to be?

Mr. Scofield: Yes, sir.

The Court: From whose possession did it come?

Mr. L. E. Lyon: It came from the Kelly—what is the name of the company—Thomas Kelly & Sons, the well driller and the people who own the book at this time.

The Court: Do you offer it in evidence?

Mr. L. E. Lyon: I offer it in evidence at this time, your Honor.

The Court: Received in evidence.

Mr. L. E. Lyon: That is, that photostatic copies may be replaced for the original so the book may be returned to its owner?

The Court: Is there objection?

Mr. Scofield: No objection.

The Court: So ordered.

(The document referred to, and marked Defendants' Exhibit GGGG, was received in evidence.)

The Court: The next is HHHH, B & W invoice to Thomas Kelly & Sons, January 24, 1940.

Mr. Scofield: I will stipulate as to that, your Honor.

Mr. L. E. Lyon: Stipulate they were invoiced on January 24, 1940?

Mr. Scofield: Yes, I will stipulate as to that.

The Court: Do you offer it? [1785]

Mr. L. E. Lyon: And that it is a true copy. Pardon me, your Honor.

The Court: Do you offer it?

Mr. L. E. Lyon: I will offer it in evidence at this time, your Honor, Exhibit HHHH.

The Court: Received in evidence.

(The document referred to, and marked Defendants' Exhibit HHHH, was received in evidence.)

The Court: Next is JJJJ, photostatic copy of a check of B & W from Thomas Kelly & Sons. And is that in payment of the invoice?

Mr. L. E. Lyon: That is in payment of the invoice, your Honor.

The Court: HHHH?

Mr. L. E. Lyon: Yes, your Honor; less a 2 per cent cash discount that Mr. Kelly testified to in the public use proceedings. I mean you take $174.13 plus 2 per cent and you come out with the invoice amount of Exhibit HHHH; and he testified that they took that cash discount.

The Court: Is it stipulated that the check was sent by Thomas Kelly & Sons to B & W and cleared through the bank in the ordinary course of business?

Mr. Scofield: I will stipulate as to that.

The Court: And that JJJJ is a true copy?

Mr. Scofield: Yes, sir. [1786]

The Court: Do you offer it?

Mr. L. E. Lyon: I will offer it in evidence at this time as Exhibit JJJJ.

The Court: Received in evidence.

(The document referred to, and marked Defendants' Exhibit JJJJ, was received in evidence.)

Mr. L. E. Lyon: And Exhibits KKKK and LLLL are in evidence as Plaintiff's Exhibits 184 and 185, your Honor. The Exhibit MMMM is a continuation of that same series. Will you stipulate that those are true copies of the original records of the Union Oil Co., of the Calender Well taken at that date?

The Court: April 7, 1940?

Mr. L. E. Lyon: Yes.

Mr. Scofield: Yes, I will stipulate as to that. I object to it as just padding the record, your Honor, enlarging the record to no purpose, as far as I can see.

Mr. L. E. Lyon: I will offer the Exhibit MMMM in evidence.

The Court: To show the prior state of the art?

Mr. L. E. Lyon: For the purpose of establishing the practice of the Union Oil Company in the adoption and use of the wall-cleaning guide in their standard practice of well cementation at that time, your Honor.

Mr. Scofield: It is already shown in the previous two exhibits, your Honor. [1787]

Mr. L. E. Lyon: If you will stipulate that the two previous preceding exhibits show the established practice, there is no use of putting in the next one.

Mr. Scofield: I will stipulate as to that.

Mr. L. E. Lyon: I will withdraw Exhibit MMMM, then.

The Court: Very well.

Mr. L. E. Lyon: And by the two preceding exhibits in my previous statement I mean the Exhibits 184 and 185.

The Court: Do you so understand it, Mr. Scofield?

Mr. Scofield: I understand it.

The Court: Very well, the next is NNNN.

Mr. L. E. Lyon: That is a duplication of a photograph used in the Patent Office proceedings; so is the next one.

The Court: NNNN and NNNN-2 and NNNN-3, and NNNN-4, and NNNN-5 and NNNN-6——

Mr. L. E. Lyon: NNNN-1 to -26, I believe are in all cases duplicates.

The Court: And all photographs?

Mr. L. E. Lyon: Of the Patent Office exhibits, your Honor.

The Court: Does each photograph contain a statement of what it purports to depict?

Mr. L. E. Lyon: On the face of the photograph?

The Court: Or on the reverse side?

Mr. L. E. Lyon: No, your Honor, only by reference to [1788] this exhibit list. I can put that on if that would aid your Honor in any way.

Mr. Scofield: I can't stipulate as to any of those, your Honor. That is a very controversial matter. It is with regard to the scratchers that they attempted to reproduce from our advertising and none of those are replicas of the advertising; and we are going to have to go over them all in this

case. I am not ready at this time to stipulate with regard to any of those photographs.

The Court: Then, I take it what you said covers all exhibits numbered NNNN down through Exhibit NNNN-26, is that correct?

Mr. Scofield: That is correct.

Mr. Lyon: In view of the stipulation with respect to Exhibit HH, we were going to formulate and see if we get our stipulation with respect to HH as it was published and released prior to the release of the bulletin 101 and distributed to the trade. If that is done, why, we can eliminate quite a few of the subsequent—well, at least the OOOO and PPPP exhibits. Did you make that stipulation, Mr. Scofield?

Mr. Scofield: The only basis upon which I will stipulate that is that they also will stipulate that Exhibit 38, which is the Wright patent 2,374,317 lacks any showing of a rotative mounting of a scratcher on a casing. If they will stipulate [1789] that, I will stipulate this.

Mr. L. E. Lyon: We won't stipulate with respect to the '317 patent. [1790]

The Court: The requested stipulation was, as I understand it, that Mr. Scofield stipulate that Exhibit HH was published and distributed prior to the publication and distribution of Exhibit CR.

Mr. L. E. Lyon: That is correct.

The Court: And that stipulation has been declined?

Mr. Scofield: Yes, sir.

The Court: Very well.

The next is Exhibit OOOO, work order of Homer R. Dulin.

Mr. L. E. Lyon: Well, we may stipulate that that is a true copy of that.

Mr. Scofield: That is connected into this Exhibit HH, your Honor. That is, I don't care to stipulate. I want them to prove up that, because the proofs with regard to this patent will be in the same category.

The Court: I take it that you also decline to stipulate with respect to Exhibit PPPP?

Mr. Scofield: That is correct.

The Court: What about the next one?

Mr. L. E. Lyon: The next one is the payment of National Supply Company to B & W for the scratchers used on their Exhibits 184 and 185.

Mr. Scofield: That I will stipulate to.

Mr. L. E. Lyon: I will offer Exhibits QQQQ and RRRR in evidence. [1791]

The Court: In other words, you stipulate that those two exhibits are true copies of what they purport to be and that the checks were cleared in the regular course of business?

Mr. Scofield: I so stipulate.

The Court: Very well. Exhibits QQQQ and RRRR are received in evidence.

(The documents referred to, marked Defendants' Exhibits QQQQ and RRRR, respectively, were received in evidence.)

Mr. L. E. Lyon: And Exhibit SSSS is the invoice of the B & W to the Union Oil Company, for which Exhibit RRRR is a payment.

The Court: Do you stipulate to the genuineness of Exhibit SSSS?

Mr. Scofield: Well, excepting Mr. Lyon's statement as to what that invoice covers, I so stipulate subject to check.

The Court: Does it show on its face what it covers?

Mr. L. E. Lyon: Well, your Honor, it does not. It only shows that it is an invoice. That will require testimony to establish what it was for, if there is no stipulation regarding it. It was an invoice to Union Oil Company for the scratchers, and there is no use of the stipulation if it is not stipulated what it was for.

Mr. Scofield: What is the date of it?

The Court: What is the date of it?

Mr. L. E. Lyon: Give me Exhibit SSSS, [1792] please.

There is Exhibit SSSS and there is Exhibit TTTT and there is Exhibit RRRR. They are all in the same transaction. They are photostatic copies of them.

Mr. Scofield: They are not, your Honor, identified with the list. They do have a date which corresponds to about the time that these wells were run. I have no objection to stipulating, on Mr. Lyon's statement that they were used in those wells, that they were the invoices used on those particular scratchers.

The Court: You stipulate. Now, your stipulation applies to what exhibits?

Mr. L. E. Lyon: RRRR, SSSS, and TTTT.

Mr. Scofield: RRRR, SSSS, and TTTT.

The Court: Very well. Do you offer those in evidence?

Mr. L. E. Lyon: All except Exhibit TTTT have already been offered and received, and I will offer TTTT at this time, and I accept the stipulation.

The Court: They may be received in evidence.

(The document referred to, marked Defendants' Exhibit TTTT, was received in evidence.)

The Court: The next is Exhibit UUUU.

Mr. L. E. Lyon: Exhibit UUUU will be withdrawn. It is one of the invoices with respect to the publication and printing of Exhibit CR, and Exhibit CR has been stipulated to.

Mr. Scofield: You withdraw UUUU? [1793]

Mr. L. E. Lyon: Yes.

The Court: Is Exhibit VVVV also withdrawn?

Mr. L. E. Lyon: Will you give me this set, Exhibits VVVV to ZZZZ and AE, AF, and AG, because I will have to determine whether those are with reference to Exhibit HH or with reference to CR. I can't remember.

Now, I want to also take Exhibits AE, AF, and AG. I will withdraw them at this time, as they refer to Bulletin No. 101. I will not withdraw them, but I will not offer them.

The Court: You are not offering Exhibits AE, AF——

Mr. L. E. Lyon: No, no. Just VVVV, XXXX, and YYYY, as they refer to publication and production of Bulletin No. 101.

The Court: What about WWWW?

Mr. L. E. Lyon: WWWW has to do with the

production, printing and artwork, of Exhibit HH, your Honor, for which there is no stipulation.

The Court: Very well. Then you are not offering at this time Exhibits VVVV, WWWW, XXXX, or YYYY?

Mr. L. E. Lyon: The WWWW, I am not offering at this time. I am physically withdrawing VVVV, XXXX, and YYYY. They will not be used at all.

The Court: Exhibit VVVV is withdrawn, Exhibit XXXX is withdrawn, and Exhibit YYYY is withdrawn, and Exhibit WWWW is not being offered. [1794]

Mr. L. E. Lyon: Exhibit WWWW I will present and ask for a stipulation at the present time that this is a true copy of the invoice to B & W as of February 29, 1940, from Homer R. Dulin Company, for the artwork on the production of Exhibit HH, the testimony having already been offered in effect in the public-use proceedings, your Honor.

Mr. Scofield: Well, I won't stipulate to that in view of the fact that they won't stipulate with regard to their patent.

The Court: Very well.

Mr. L. E. Lyon: Just a moment.

The Court: What about Exhibit ZZZZ, are you offering that?

Mr. L. E. Lyon: Exhibit ZZZZ I will offer at this time. It is the blue-covered catalog.

Mr. Scofield: I will stipulate as to that, your Honor.

The Court: Is there any particular use to be made of it?

Mr. L. E. Lyon: I will stipulate that that is a publication of B & W as of July, 1940, Mr. Scofield.

Mr. Scofield: Does it appear on the——

Mr. Lyon: It only appears from the records of the publisher, the ledger sheet of George Rice and Sons, being Exhibit AG for identification, and was so identified at the time of the public-use proceedings.

Mr. Scofield: And this also appeared in one of the trade [1795] publications, did it not?

Mr. L. E. Lyon: No.

Mr. Scofield: On the basis of Mr. Barkis' statement as to the date, I will stipulate that the bulletin was issued, subject to check, your Honor. That is, I would like to check that with the public-use proceedings.

The Court: And the date stipulated is what?

Mr. L. E. Lyon: July, 1940. I will offer Exhibit ZZZZ.

The Court: It is received in evidence as Exhibit ZZZZ.

(The document referred to, marked Defendants' Exhibit ZZZZ, was received in evidence.)

The Court: Exhibit AB has been withdrawn?

Mr. L. E. Lyon: That is already in evidence, your Honor, as Exhibit 171. Exhibit AB is in evidence as Plaintiff's Exhibit No. 171. So only the duplicate copy of it was withdrawn.

The Court: Very well.

Then, Exhibits AC-1 and AC-2, photographs of Jones and Berdine test installation at Dominguez Hills.

Mr. Scofield: The plaintiff is ready to stipulate, your Honor, that those are the photographs of a test apparatus of Jones and Berdine.

The Court: And that they depict what they purport to depict?

Mr. Scofield: Yes, sir. [1796]

Mr. L. E. Lyon: I offer Exhibits AC-1 and AC-2 in evidence.

The Court: I take it that what they purport to depict was seen at the time of that test?

Mr. Scofield: They show the test apparatus attached to the side of the tank.

Mr. L. E. Lyon: They show the test apparatus as used at that time and at that place.

The Court: Very well. Exhibits AC-1 and AC-2 are now received in evidence.

(The documents referred to, marked Defendants' Exhibits AC-1 and AC-2, respectively, were received in evidence.)

The Court: Exhibit A-D.

Mr. L. E. Lyon: That was stipulated to in the public-use proceedings.

Mr. Scofield: I will stipulate to it, your Honor. I object to it as immaterial.

The Court: In other words, you stipulate that it is an invoice covering a Weatherford Oil Tool Company scratcher used in that test?

Mr. L. E. Lyon: Used in a test, in our test, which will be testified to by Mr. Doble, that that particular scratcher was obtained by B & W, and it is a Weatherford scratcher, from the States Sales & Service Company on an invoice, and the obtaining of

the scratcher was obtained on December 9, [1797] 1952.

The Court: And the scratcher was used in what test?

Mr. L. E. Lyon: The scratcher was used in a test which is shown by exhibits. First, the test results are shown in Exhibits NNNN-24a and NNNN-24b, and the scratcher itself is shown in Exhibit NNNN-25.

Isn't that correct, Mr. Doble?

Mr. Doble: That appears to be correct.

The Court: Can you identify the time and place of the test, without respect to the results? The results are in controversy.

Mr. L. E. Lyon: Those particular tests were made when, Mr. Doble, and where?

Mr. Doble: They were made at the salesroom of the B & W Company at Long Beach. I believe that test was made in December of 1942.

The Court: 1952?

Mr. L. E. Lyon: 1952.

Mr. Doble: 1952, or it might have been made early in January of 1953.

The Court: May it be stipulated that the scratcher, the Weatherford scratcher covered by the invoice, Exhibit AD, was obtained at that time, as of December 9, 1952, for the purpose stated, namely, for making a test at the B & W place of business?

Mr. Scofield: The reason I won't stipulate to that, your [1798] Honor, is that the scratcher itself is in the Patent Office, so we won't have it here, and the tests that have to do with that scratcher have no bearing upon this situation at all.

The Court: May it be stipulated that the State Sales & Service sold B & W a Weatherford scratcher on or about December 9, 1952, and that Exhibit AD for identification is an invoice covering that transaction?

Mr. Scofield: Yes, and I will stipulate further that there is——

The Court: That there is a copy of the invoice——

Mr. Scofield: That there is a copy of the invoice, and that there is a photograph here marked, of defendants, of that particular scratcher, but the scratcher is not here.

Mr. L. E. Lyon: And the photograph is Exhibit NNNN-25 for identification.

Mr. Scofield: I will stipulate to that, but that is all.

The Court: Exhibit NNNN-25, you say?

Mr. L. E. Lyon: Yes. We will offer NNNN-25 and AD and accept the stipulation.

The Court: Both are now received in evidence. Those are Exhibits NNNN-25, the photograph, and AD, the invoice.

(The documents referred to, marked Defendants' Exhibits NNNN-25 and AD, were received in evidence.)

The Court: Exhibit AE for identification is a photograph. [1799]

Mr. L. E. Lyon: Just a moment. I will check. I think those are also withdrawable.

Where is Exhibit AE?

The Court: Exhibits AE, AF, and AG appar-

ently deal with the George Rice and Sons transaction, whatever that may have been.

Mr. L. E. Lyon: Just a moment, please.

Your Honor, some of these exhibits overlap between Exhibit HH and Exhibit CR, and I just have to be careful that I don't throw the wrong one out.

I withdraw Exhibit AE, as being directed solely to the No. 101 bulletin, Exhibit CR, which is stipulated to.

As to Exhibits AG and AH, I am now informed that they deal partially with the 101 bulletin and partially with Exhibit HH, as to which I understand there will be no stipulation, even that these are true copies of the records.

Mr. Scofield: That is right.

The Court: You are referring now to Exhibits AF and AG?

Mr. L. E. Lyon: Exhibits AF and AG.

The Court: Are they withdrawn?

Mr. L. E. Lyon: No. There will be no stipulation, I mean they will not stipulate that these are true copies of the records.

Mr. Scofield: Not unless you stipulate with regard to the patent. [1800]

The Court: Very well. They are not offered at this time, then, I take it?

Mr. L. E. Lyon: No. They are subject to proof before they can be offered.

The Court: Very well.

Exhibit AH is B & W Bulletin No. 104, apparently. May it be stipulated as to that?

Mr. Scofield: Yes, sir, I will stipulate as to that.

The Court: Do you stipulate that it is a true copy?

Mr. Scofield: Yes, sir.

The Court: And what about the use of it and the date of publication?

Mr. L. E. Lyon: When was it published? Wait a minute. It is probably right on this list. No, it isn't.

When was Bulletin 104 released?

I am informed that it was in the fall of 1946. That was distributed to the trade at that time.

The Court: May it be so stipulated?

Mr. Scofield: Yes, subject to check, your Honor, I think that is correct.

Mr. L. E. Lyon: I will accept the stipulation and offer Exhibit AI in evidence at this time.

The Court: Exhibit AH, is it not?

Mr. L. E. Lyon: Exhibit AH. Pardon me. You are right.

The Court: It is received in evidence. [1801]

(The document referred to, marked Defendants' Exhibit AH, was received in evidence.)

Mr. L. E. Lyon: Exhibit AI is already in evidence.

The Court: Exhibit AJ, may it be stipulated that it is a true copy of the Wright Patent No. 2,634,813?

Mr. Scofield: I will stipulate as to the patent, yes, sir, a soft copy of the patent.

The Court: Do you offer it?

Mr. L. E. Lyon: I offer Exhibits AJ and AK, both of which are soft copies of two United States letters patent.

The Court: The same stipulation as to Exhibit AK?

Mr. Scofield: The same stipulation.

The Court: Very well. Both Exhibits AJ and AK are now received in evidence.

(The documents referred to, marked Defendants' Exhibits AJ and AK, respectively, were received in evidence.)

The Court: Exhibits AL-1 and AL-2 apparently are photographs of the Weatherford scratcher after use. May there be a stipulation as to those?

Mr. Scofield: Yes, I will stipulate as to those, your Honor, only if there is read into the record or copied into the record the testimony of Mr. Wright, I believe, or of Mr. Barkis, that was put in the public-use proceeding, with regard to these exhibits, that is, these photographs.

Mr. L. E. Lyon: Well, as far as combing that out of the [1802] record, your Honor, I think it would take less time to put the testimony on here.

The Court: Very well.

Exhibit AM for identification purports to be a letter from Maxwell to Scofield of February 5, 1944. Will you stipulate as to that?

Mr. Scofield: Yes, sir, I will stipulate as to that, your Honor.

Mr. L. E. Lyon: I don't know, your Honor. I may ask you, in identifying that matter, if the next letter is not going to be offered on behalf of Hall, I would not offer Exhibit AM. I have no reason for

putting them in. They asked for certain material, and one letter says no such material ever existed. I don't know whether they intend to rely on one, and I certainly do not rely on the other, if they do not intend to rely on the one.

Mr. Scofield: I will certainly put both of them in. I intend to rely on them.

Mr. L. E. Lyon: If you want to offer them while they are here, I will stipulate that they are true copies, both of them. [1803]

The Court: Now, gentlemen, something was said last evening that prompts this query:

You stipulated in effect that the agreement of 1944, the Hall agreement, Exhibit No.——

Mr. L. E. Lyon: 34, your Honor.

The Court: ——34, never existed in legal contemplation.

Mr. L. E. Lyon: That is right.

The Court: So that leaves us, I take it, with consideration of the Maxwell testimony and the other evidence concerning the matter both before and at the time and subsequent to it as, nevertheless, having happened.

Mr. L. E. Lyon: These particular letters here, your Honor, do not refer to that. They refer to an alleged sending of request made by Hall to Mr. Maxwell with respect to a patent application which is separate and apart from the dealings with respect to that contract.

The Court: I take it what the plaintiffs will ask is that the court view the conduct of the defendants, even though they purported to be acting under that

agreement, as if the agreement never in fact existed. By the same token, I take it that the defendants will ask the court to view the matter that when the plaintiff Hall said he had a license under a certain arrangement, that no such arrangement ever existed, and that that representation was a false one.

I mention that because something was said here last [1804] evening that indicated to me that one of you had the view that everything connected with that agreement was wiped out, even what the parties had done in reliance upon it.

Mr. L. E. Lyon: I think, your Honor, that under the law the question comes down as to whether the representations were made in good faith. Now, representation by Mr. Hall, for example, that he had a license, made in 1944, if it is shown that he believed he had a license at that time, that may be shown to have been made in good faith, and perhaps, under the law of unfair competition, a representation of that kind made in good faith and on good grounds is not an actionable proposition on a condition of this character.

The Court: Then each party is his own judge of what the arrangement was, as long as he honestly believed what he was saying?

Mr. L. E. Lyon: As long as he honestly believed what he was saying, I think that fits the law. I do not think that it is actionable at this time, in my opinion, to declare now that no contract existed, and merely because of that declaration assert that a person is guilty of unfair competition because in 1945, before that declaration, he represented that he

did have a contract, if he believed it in good faith at that time.

The Court: Suppose he subjectively honestly believed it and that there was no reasonable basis for his belief, must not it be not only an honest belief but a reasonable belief? [1805]

Mr. L. E. Lyon: That is correct, an honest belief and a reasonable belief.

The Court: Do you agree with that statement and proposition, Mr. Scofield?

Mr. Scofield: I think so, your Honor, because I think that is borne out by the very fact that they accepted royalty from us under this contract.

Mr. L. E. Lyon: That royalty was returned.

The Court: Yes, but if the court finds by looking at the entire transaction that neither side had any reasonable basis for asserting what it did assert with respect to that arrangement, the court would be compelled to find that that was an unfair trade practice, I take it.

Mr. Scofield: That is right. Of course, you have to determine whether or not these people acted with propriety at the time that they made these charges, one way and another, after this contract was signed and was invoked and up to the time that it was here determined and we stipulated that there was no contract. I think that is certainly a matter that your Honor will have to take into consideration.

The Court: So you have taken the body out and left the ghost of the agreement——

Mr. Scofield: That is what it amounts to.

The Court: ——of September, 1944, so that is

the specter that haunts every act that has been done by either party since [1806] that time, I guess.

Mr. Scofield: That is why, your Honor, in our pleadings we have continuously, since the first, requested the court to decide that this contract be rescinded rather than be considered as no contract at all.

Mr. L. E. Lyon: It has already been so considered.

The Court: I thought it well to interrupt to inquire.

* * *

The Court: Very well.

Do you offer the Maxwell letter, Exhibit AM?

Mr. L. E. Lyon: Are you going to offer it?

Mr. Scofield: I am going to offer them.

Mr. L. E. Lyon: I will stipulate that they are true copies of what they sent at that time, at that place, by the sender to the sendee, as shown by their faces.

The Court: That applies to Exhibits AM and AN?

Mr. L. E. Lyon: Yes, your Honor.

The Court: Do you so stipulate?

Mr. Scofield: I offer them.

The Court: They are marked as defendants' exhibits. Do you want to offer them, Mr. Lyon?

Mr. L. E. Lyon: No, I do not intend to offer them, if he is going to offer them. I merely put them in here as part of [1807] the defense.

Mr. Scofield: Do you want us to renumber them as part of our exhibits, your Honor?

The Court: If you so desire, they will be renumbered. Otherwise, they will bear their present identification.

Mr. Scofield: I think that they may just as well bear their present identification.

The Court: Is there any particular point as to who offers them?

Mr. L. E. Lyon: Only with respect to the sometimes fallacious consideration of evidence that the person offering them is bound by them and the other person is not.

The Court: I never indulge in that——

Mr. L. E. Lyon: Otherwise I have no objection to offering them in evidence.

The Court: ——except in so far as a party may vouch for evidence. And both of you stipulate as to the genuineness of these?

Mr. Scofield: That is right.

The Court: So, if there is no objection, Exhibits AM and AN for identification will be received in evidence, and bear the same identification in evidence, even though offered by the plaintiff.

(The documents referred to, marked Exhibits AM and AN, respectively, were received in evidence.) [1808]

The Court: Exhibits AO-1 and AO-2, "Evans' sketches of Rosecrans #38 and #9 wells."

Mr. L. E. Lyon: Sketches made by Mr. Evans during the taking of his deposition in the public-use proceedings before the Patent Office, your Honor, and made at the request of Mr. Scofield.

Mr. Scofield: Yes, sir. And I would like to have copied into the record at this time Mr. Evans' testimony.

Mr. L. E. Lyon: We are offering, at a later time, Mr. Scofield, all of those depositions, as you will find in Exhibits BZ-1 to BZ-11. Mr. Evans' deposition is——

The Court: That is Exhibit BZ-3.

Mr. L. E. Lyon: ——Exhibit BZ-3.

The Court: Do you offer it in evidence?

Mr. L. E. Lyon: I will offer it in evidence at this time.

Mr. Scofield: I will stipulate in regard to that.

Mr. L. E. Lyon: I would like to have it copied into the record.

Mr. Scofield: Yes.

Mr. L. E. Lyon: And the original returned, in each of these instances, your Honor.

The Court: You are referring, now, only Exhibit BZ-3, are you not?

Mr. Scofield: Exhibit BZ-3.

Mr. L. E. Lyon: Yes, sir. [1809]

Mr. Scofield: That is agreeable to the plaintiff.

The Court: Very well. The Evans deposition. Exhibits AO-1 and AO-2 are received in evidence at this time, along with the Evans deposition, Exhibit BZ-3.

(The documents referred to, marked Defendants' Exhibits AO-1 and AO-2 and BZ-3, respectively, were received in evidence.)

The Court: And the reporter will copy the depo-

sition into the reporters' transcript at this [1810] juncture.

* * *

The Court: Exhibit AY, then, is offered as a catalog of Weatherford Oil Tool Company?

Mr. L. E. Lyon: Bearing publication index of March, 1951.

The Court: Is it stipulated to be a true copy?

Mr. Scofield: Yes, sir.

The Court: Will you stipulate that it was circulated to the trade?

Mr. Scofield: It is stipulated that it was circulated to the trade. [1811]

The Court: Do you offer it?

Mr. L. E. Lyon: I offer it in evidence.

The Court: It is received in evidence.

(The document referred to, marked Defendants' Exhibit AY, was received in evidence.)

The Court: Exhibit AZ, may the same stipulation be made with respect to that catalog of June, 1949?

Mr. L. E. Lyon: Well, I am offering the entire catalog in each instance, rather than the particular pages enumerated.

Mr. Scofield: The same stipulation.

The Court: Exhibit AZ is received in evidence.

(The document referred to, marked Defendants' Exhibit AZ, was received in evidence.)

The Court: Exhibit BA is already in evidence. Exhibit BC appears to be page 324 of the World Oil of August, 1948, of Weatherford Spring Com-

pany advertisements. Is it stipulated that they were inserted by the Weatherford Spring Company and that they are true copies?

Mr. Scofield: I so stipulate. [1812]

Mr. L. E. Lyon: I will offer Exhibit BC in evidence.

The Court: Received in evidence. [1813]

* * *

The Court: BE, Rogers Articles from The Oil & Gas Journal of July 13 of 1946. Stipulated to be true copies of what they purport to be? [1814]

Mr. Scofield: Yes, sir.

Mr. L. E. Lyon: And as printed and circulated in that magazine at July 13, 1946?

Mr. Scofield: Yes, the article was shown.

The Court: To the trade?

Mr. Scofield: Yes, sir.

Mr. L. E. Lyon: I will offer Exhibit BE in evidence.

The Court: Received in evidence.

* * *

The Court: Exhibit BF, apparently page 48 of the February 21, 1952, issue of Petroleum World and Oil Magazine.

Mr. L. E. Lyon: Here it is.

Mr. Scofield: I will stipulate as to that, your Honor.

The Court: What is it, a photograph?

Mr. L. E. Lyon: Will you stipulate that it is a photograph of Mr. Jesse E. Hall, Sr., and Oscar Gay, also?

Mr. Scofield: Yes. But I won't stipulate as to

the facts of the article, that is, the facts are not correct.

The Court: That is, you will not stipulate to what is on the page as true?

Mr. Scofield: That is right.

The Court: But it is a true copy of the page as published?

Mr. Scofield: So stipulated.

Mr. L. E. Lyon: I will offer Exhibit BF in evidence as [1815] Exhibit BF.

The Court: Received in evidence.

* * *

The Court: The next appears to be Exhibit BJ, Houston Pipe Appliance Company circulars.

* * *

The Court: Is it stipulated to be a true copy of what it purports to be?

Mr. Scofield: Yes, sir.

The Court: Do you offer it?

Mr. L. E. Lyon: I will offer BJ in evidence.

The Court: Received in evidence.

* * *

The Court: Next appears to be BO, certified copy of [1816] Public Use Proceedings of B & W v. Hall.

Mr. L. E. Lyon: I will offer that in evidence, your Honor.

The Court: Stipulated to be a true copy?

Mr. Scofield: Yes, sir.

Mr. L. E. Lyon: It is a certified copy.

The Court: Received in evidence.

* * *

The Court: BO-1, paper No. 15.

Mr. L. E. Lyon: That is also a certified copy, your Honor, and I will offer it in evidence.

The Court: Is there objection?

Mr. Scofield: I was just checking, your Honor, to see whether or not that is a duplication. It does not appear to be. I will stipulate as to that.

The Court: Received in evidence.

* * *

The Court: BP, decision, dated December 9, 1952, etc.

Mr. L. E. Lyon: With respect to that, your Honor, that is a copy received by us in our office of that decision. I will ask that it be received in evidence and that a photostatic copy be substituted in place of the original copy which I have [1817] produced.

The Court: So stipulated.

Mr. Scofield: That is agreeable, your Honor. I will stipulate.

The Court: Very well, so ordered. BP is received in evidence.

* * *

The Court: Will a stipulation be made with respect to this series of correspondence commencing with Exhibit BQ? [1818]

Mr. L. E. Lyon: BR and BS.

Mr. Scofield: Yes, sir; I will stipulate with regard to BQ, BR, and BS.

The Court: That the letters are true copies of what they purport to be and were sent on or about the dates they bear by the persons to the purported addressees?

Mr. Scofield: I will so stipulate.

Mr. L. E. Lyon: I will offer the three documents marked for identification as BQ, BR, and BS in evidence as Exhibits BQ, BR, and BS.

And at this time, your Honor, it might be well to point out to the court and for the purpose of the record that those particular records are in a chain of correspondence, other letters in which are in evidence and have been offered by the plaintiff, including the letter written by Mr. Gratama to Mr. Scofield. What is the exhibit number of that?

The Court: Is that a plaintiff's exhibit?

Mr. Scofield: Yes, sir.

Mr. L. E. Lyon: Yes, your Honor.

Mr. Scofield: 17.

The Court: Does that complete the reference to that?

Mr. L. E. Lyon: Well, there is the letter, Exhibit 16, is a part of that same correspondence, too, your Honor, 16 and 17.

The Court: Very well. Exhibits BQ, BR and BS are [1819] received in evidence.

* * *

The Court: Exhibit BU appears to be a letter from Foote to Houghton, dated November 28, 1949.

Mr. L. E. Lyon: BU-1 is a copy of the same letter, your Honor, with the attachment.

The Court: Is it stipulated as to BU and BU-1 that they were true copies and were sent on or about the dates they bear by the person writing it and to whom addressed?

Mr. Scofield: Yes, sir; I so stipulate. I was just checking to see if that was duplication.

Mr. L. E. Lyon: We will offer Exhibits BU and BU-1 [1820] in evidence.

The Court: Received in evidence.

* * *

Mr. L. E. Lyon: At this time I would like to offer in evidence the depositions BZ-1, BZ-2, -3, -4, -5, -6, -7, -8, -9, -10, and -11.

The Court: BZ-3——

Mr. L. E. Lyon: Already has been received. I will ask that they be copied into the record and the original depositions so copied be returned to me.

The Court: Very well, so ordered. And the reporters will copy BZ-1, -2, -4, -5, -6, -7, -8, -9, -10, and -11 into the record at this point, and the originals will be returned to the defendants. [1821]

* * *

(At this juncture, said depositions are copied into the record beginning at page 1822-1, and will be found in Supplemental Volumes of November 25, 1953, as follows:

Defendants' Exhibit	Supplemental Volume No.
BZ-1	14-A
BZ-2	14-A
BZ-4	14-A
BZ-5	14-A
BZ-6	14-B and 14-C
BZ-7 to BZ-11	14-D)

* * *

I would like to state a further stipulation, your Honor: It is stipulated that Exhibit FFF-1 and

the catalog Exhibit FFF were reproduced in the 1948 composite catalog, the sixteenth edition of the composite catalog of oil field and pipeline equipment, which was released to the trade on or about March 23, 1948, that being subject to correction, if any appears, and that the composite catalog is the publication of the trade which goes to every oil company and to every operating department of the oil companies.

The Court: Is it so stipulated?

Mr. Scofield: The plaintiff is ready to stipulate, your Honor, that Exhibits FFF and FFF-1 appeared in the composite catalog of 1948. As to the date of when that catalog actually was published, I am told that it comes out at different times of the year, and subject to check as to the date which has been indicated, I am ready to stipulate.

Mr. L. E. Lyon: Are you also ready to stipulate that the composite catalog is circulated to every oil company and to most all of the operating departments of every oil company?

Mr. Scofield: Well, I am willing to stipulate that it is circulated generally throughout the industry. I would not say to all of the oil companies.

The Court: Do you accept the stipulation?

Mr. L. E. Lyon: I will accept the [1826] stipulation.

* * *

JESSE E. HALL, SR.

Cross-Examination
(Continued)

By Mr. L. E. Lyon:

Q. Mr. Hall, you have testified that you went to Pittsburgh in the year 1947, in the spring, I believe. Is that correct?

A. I testified that I went to Pittsburgh in the early part of the year.

Q. I believe that you testified that you returned to Pittsburgh from Venezuela in the spring of 1947. Is that your testimony?

A. I returned from Venezuela to Pittsburgh in 1947.

Q. Well, was that in the spring?

A. I recollect that being in the spring. I would want to check with the date. It is of record and testified to many times.

Q. I believe that you testified that you returned to Pittsburgh in the spring of 1947 with reference to some charge or assertion or information with respect to some claim of infringement, is that correct? A. That is correct.

Q. You also testified, did you not, in a case which was pending before the United States District Court in Houston, [1827] Texas, in the case of Smith v. Hall, Civil Action No. 1473, and gave a deposition in that case on or about the 5th day of May, 1948?

A. No, sir.

Q. You did not give a deposition on the 5th day of May, 1948, in the case of Roland E. Smith v.

(Testimony of Jesse E. Hall, Sr.)

Jesse E. Hall, Sr., d/b/a Weatherford Spring Company, Civil Action No. 1473? A. I did.

Q. In that action you testified with respect to this trip to Pittsburgh in the spring of 1947, as follows, and that was referring to the trip to Pittsburgh with reference to the cancellation of certain orders in the spring of 1947, was it not?

A. Oh, I recall of making several trips in '47 to Pittsburgh. I don't recollect whether it was the first trip—I don't believe the first trip had anything to do with canceling orders. I don't recall that at this time.

Q. Well, you testified in that action with respect to a Pittsburgh trip, and I am reading from your deposition given on the 5th day of May, 1948, in the case of Smith v. Jesse E. Hall, Sr., d/b/a Weatherford Spring Company, defendant, Civil Action No. 1473, pending in the United States District Court for the Northern District of Texas, Fort Worth Division, where you testified——

A. Now you have got it right, Fort Worth instead of [1828] Houston.

Q. And I am reading from page 61, your testimony:

"Q. And went to Pittsburgh and got those big orders over his head? A. That is right.

"Q. This dissatisfaction you encountered in Pittsburgh, was any part of that in regard to any patent question or patent infringement?

"A. We discussed patent infringement or some part of it.

(Testimony of Jesse E. Hall, Sr.)

"Q. Was that what Gulf was complaining of, the patent situation? A. Absolutely not."

You so testified as to that conference, did you?

A. I sure did. As I told you, I made several trips to Pittsburgh.

Q. Now, in that case, in order to establish the time when you made that trip, I believe there was produced air travel tickets, and I will refer you to a second deposition taken in that case of yours on the 16th day of January, 1948, and will refer you to page 185 of the transcript of that deposition, where I believe it was agreed that you made two trips to Pittsburgh, one from Pittsburgh to New York on April 30, 1947, and one on July 28, 1947. Does that record which I place before you refresh your recollection in that [1829] respect?

A. No, it doesn't. It refreshes my recollection that I testified that I did that, but if that was the case, I made several trips, and I won't say two trips. I recall possibly three, and this matter was the subject matter of practically every trip. I could have testified I talked about anything concerning it, on either one of the trips. I don't recall which trip I talked to him on. [1830]

Q. Is it your view you now accept the testimony and the fact that you made one trip on April 30, 1947, to Pittsburgh and one on July 28, 1947, as shown by this record?

A. I have no right to contradict that. It was produced at an earlier date and I had records for it, and I don't want to do it at this time.

(Testimony of Jesse E. Hall, Sr.)

Q. On July 28, 1947, when you were in Pittsburgh, as I believe it is now agreed, you were shown by the Gulf Research and Development Company certain scratchers on behalf of B & W and which are exemplified by this Exhibit 88 in evidence, were you not?

A. I don't recall of ever seeing this scratcher until it was produced here in court.

Q. Were you alone in Pittsburgh in July 28, 1947?

A. I couldn't state that, whether I was alone or not. I suppose I were at some time.

Q. Was Mr. Scofield with you?

A. I don't believe so.

Q. Do you recall discussing with Mr. Scofield the question of infringement by the Gulf of certain rights of yours if they purchased certain equipment from B & W, on or about July 28, 1947?

A. Near about that time or in the year of 1947. It seems to me like it was more in the fall of '47 and possibly September I recall of discussing with Mr. Scofield that it [1831] had been purported that the B & W would make and sell anything to the Gulf that they might want to buy, regardless of what I was making and selling.

Q. You were present at the time that the deposition of Mr. Houghton was taken on January of 1950, as shown by the Plaintiff's Exhibit 87, were you not? A. I were not.

Q. In that deposition it is stated by Mr. Houghton, on examination by Mr. Scofield, at page 28, question 67:

(Testimony of Jesse E. Hall, Sr.)

"Do you recall whether or not you had any word from me about this time along in July, the 29th or 30th, with regard to these two coil type scratchers that Mr. Wright had sent to Mr. Wescott?"

And Mr. Houghton's answer was:

"Yes, I did.

"You called me on the phone, and seemed to be highly excited because you appeared to be under the impression that Gulf was buying or considering buying scratcher equipment from the B & W, and you gave me to understand in no unmistakable terms that you were not going to stand for it, and that you were going to sue Gulf Oil Corporation or Gulf Research & Development Company, and I recall distinctly, I said, 'What in the blank are you going to sue on,' because I did not know you had any patent at the time upon which you could base a suit." [1832]

Now, considering that testimony, do you have any explanation or any knowledge of how in July 29th or 30th, 1947, in view of your present testimony, Mr. Scofield obtained knowledge that B & W was offering the two coil-type scratchers to the Gulf Oil Company in July of 1947?

A. I recall of discussing with Mr. Scofield as quick as I found out about this scratcher; and I will say it is the earliest date that the Gulf notified me about it that I discussed it with him. But I don't have any record of any date when the Gulf did, other than I think it was in September.

Q. Well, this record here of Mr. Houghton's

(Testimony of Jesse E. Hall, Sr.)

testimony—— A. I never saw the scratcher.

Q. ——and Mr. Scofield's question that I just read you would indicate, would it not, that that date was in July of 1947 when you became aware or were notified by the Gulf that the B & W was offering to them a scratcher like Exhibit 88?

A. I don't believe so. I think that is your conclusion.

Q. Well, do you know how Mr. Scofield became advised of it other than through a notice from you on July 28th or 29th when he called Mr. Houghton by telephone, as he stated he did in the examination that I read you?

Mr. Scofield: That is objected to as calling for speculation, your Honor. [1833]

The Court: Overruled.

A. I recall about three points of notification of this scratcher along about the time. And I think Mr. Houghton, as well as I recall it, volunteered and told Mr. Scofield about it over the telephone hisself, and I wouldn't be a bit surprised that Mr. Scofield would stipulate that that is the first time he heard of it.

Mr. L. E. Lyon: Well, I asked Mr. Scofield for that stipulation and he declined to so stipulate.

Do you still decline to stipulate that you were notified by Mr. Houghton or Mr. Hall or someone else on behalf of the Gulf Research and Development Company that scratchers like Exhibit 88, Plaintiff's Exhibit 88, were being offered to Gulf and the Gulf Research, particularly, during July of 1947?

(Testimony of Jesse E. Hall, Sr.)

Mr. Scofield: I am willing to stand on that record. I have no independent recollection about this matter at all. It is all in the record. [1834]

* * *

Mr. L. E. Lyon: I would like to ask if you have available, Mr. Scofield, that correspondence that passed between you and Mr. Hall in June of 1945 until November of 1945 with reference to the filing of the 627,013 application which you said you would produce?

Mr. Scofield: That correspondence, your Honor, was demanded under paragraph 4, I believe, of the Motion for Production of Documents, filed by the defendants on October 21, 1953. That correspondence was between Mr. Hall and myself with respect to the second Hall application which is here in evidence as Defendants' Exhibit K.

I had originally intended to rest on my privilege, but in view of the cross-examination yesterday of Mr. Hall with regard to the definition of the manner in which the wires extended from the scratcher collar, I am going to waive that privilege and I am going to mark these letters in evidence [1836] as Plaintiff's Exhibits, if I may.

The first letter is a letter——

The Court: Now, is this upon the cross-examination of Mr. Hall that you are doing this?

Mr. Scofield: Well, I can do it now or later. He asked me to produce them and I want them marked as our exhibits, your Honor.

The Court: They can be marked at a recess. We all agreed on that, I think—I hope.

(Testimony of Jesse E. Hall, Sr.)

Mr. Scofield: Very well.

The Court: If this is the time to receive them, we will receive them at this time.

Mr. L. E. Lyon: I have asked that they be produced, your Honor. It was in the cross-examination yesterday that he said he would produce them this morning. I am not particular whether they be marked now or at the first recess we have.

The Court: How many are there, Mr. Scofield?

Mr. Scofield: There are five or six. I will mark them at the recess.

The Court: The clerk can be marking them now as this examination proceeds, if you will hand them to him.

Mr. Scofield: As you choose.

Mr. L. E. Lyon: Have him mark those exhibits next in order.

The Court: If you will just hand them to him, he will [1837] mark them. I am just opposed to 15 gentlemen whose time is worth something sitting here while the clerk solemnly attaches a piece of paper to another piece of paper. It just occurs to me as being an awful waste of time. [1838]

It is requested, your Honor, that photostats be substituted for the original correspondence.

The Court: Very well, as soon as they are identified. The clerk will mark them now, but the cross-examination can proceed.

Q. (By Mr. L. E. Lyon): Mr. Hall, you have testified that the purpose of your forming Weatherford Spring Company of Venezuela was for the purpose of having warehousing and servicing facilities

(Testimony of Jesse E. Hall, Sr.)

available in Venezuela in connection with the sale of your equipment in Venezuela, is that correct?

A. No, sir. I think I testified that the Weatherford Spring Company of Venezuela was organized in behalf of sales.

Q. In behalf of what? A. Sales.

Q. Now, in behalf of sales, did that include, I believe what you said was servicing as well as sales, in Venezuela? A. That is correct.

Q. That was the only purpose for which it was formed, is that correct?

A. Well, I couldn't go that far to say, because that is the purpose as I recall from different conferences had on it, that that was the main purpose.

Q. That is the only purpose which you had in forming the Venezuelan company, the Weatherford Spring Company of Venezula, is that [1839] correct?

A. No, I couldn't say that is correct. That is your language of saying it.

Q. Well, what other purposes, if any, did you have in mind?

A. I don't recall, and I think it is of record, whatever it was formed for, because it would have been put on the charter, but, as I recall it, that was the principal reason.

Q. It wasn't for any purpose in connection with any dealings with anyone else, that you formed the Venezuelan company of the Weatherford Spring Company, was it?

A. That was the purpose—that was one of the purposes.

(Testimony of Jesse E. Hall, Sr.)

Q. What was that?

A. Jim Berry and I were considering making a deal, and I considered I didn't want any partnership with him.

Q. Well, it wasn't for the purpose of avoiding any deal that you had in this country, was it, with anyone? A. Absolutely not.

Q. And to your knowledge no court ever found that it was for the purpose of avoiding a deal that you had with someone else? Is that correct?

A. Absolutely not.

Q. I will refer you to Finding of Fact No. III of the United States District Court in Case No. 1473, which is the case of yourself doing business as Weatherford Spring Company [1840] and the Weatherford Spring Company of Venezuela, C. A., Appellants, v. Roland E. Smith, Appellee, and I am referring to the printed record before the Circuit Court of Appeals of the Fifth Circuit, and this is the finding of fact of the District Court, which findings of fact were duly entered, according to this record, on October 8, 1949, and were signed by United States District Judge Jos. B. Dooley, and I will read to you Finding of Fact No. III:

"Hall, Sr., about April, 1947, began meditating the organization of a corporation under the laws of Venezuela, and said plans went forward until the corporation was organized about June, 1947, under the name of Weatherford Spring Company of Venezuela, C. A. (herein called Wford of Ven.). Hall, Sr., was the originator of said corporation. He

(Testimony of Jesse E. Hall, Sr.)

names his son, Elmer, President and was himself at first a member of the governing board of the company. A purpose of business need for the company, as explained in Finding of Fact VII was probably more in his mind at the outset, but at least by the time it was organized he, as well as Elmer, also had in view the further purpose of using the company as a blind in a scheme to evade Smith's commission claims on the last three Mene Grande orders aforesaid, and also commissions on other sales in the export [1841] market."

That is a correct reading of that finding of fact, is it?

A. I don't know whether it is a correct reading of it.

Q. Well, will you read it?

A. I wouldn't. I don't remember what they were. I remember that you read it, but I am not comparing it.

Mr. L. E. Lyon: All right. In view of the witness' statement, your Honor——

The Witness: That is a record and it is of record.

Mr. L. E. Lyon: ——from the transcript of this case before the Circuit Court of Appeals of the Fifth Circuit, the transcript being the transcript in appeal case No. 13,137 before the Fifth Circuit Court of Appeals, I would like to offer in evidence at this time the findings of fact of the District Court, which are included in the record on pages 144 to 171, inclusive, and ask that they be copied

(Testimony of Jesse E. Hall, Sr.)

into this record from this transcript in toto and the transcript be returned to me, if that is agreeable with the court.

Mr. Scofield: Your Honor, I object to that, unless the whole transcript goes in. That is, as to what transpired in that case is very important. Now, those are findings prepared by the plaintiff in that case. The case was settled out of court. It never went before the Circuit Court of Appeals, and I think that transcript should be in evidence so your Honor will know the circumstances as to how that case [1842] actually was settled out of court, that is, what Mr. Smith was claiming, what he got finally, and how it was provided for in these contracts in Venezuela.

Mr. L. E. Lyon: I am only offering at this time the findings of fact as identified. I see no reason—as the case was not concluded, but the findings of fact now stand as the findings of fact of the Circuit Court, which appeal was dismissed there, and the findings still stand as the findings of that court.

Mr. Scofield: I want the whole transcript in, your Honor, of that case.

The Court: Well, you may offer it.

At this time the transcript will be marked Exhibit CX for identification, and that portion identified by Mr. Lyon will be received in evidence. They are findings of fact and conclusions of law?

Mr. L. E. Lyon: Findings of fact and conclusions of law, yes, your Honor.

The Court: And the reporter will copy them

(Testimony of Jesse E. Hall, Sr.)

into the record in the reporters' transcript at this point. [1843]

* * *

Q. (By Mr. L. E. Lyon): Mr. Hall, you manufactured centralizers when you were doing business as the Weatherford Spring Company of Weatherford, Texas, did you not? A. I did.

Q. What was the weight, and do any of your catalogs here in evidence show the weight, of a seven-inch spiral centralizer?

A. Have you a catalog?

Mr. L. E. Lyon: Well, I have one catalog here. There are others in evidence. I believe this catalog is in evidence. I don't want to duplicate an offer. Which catalog is that?

I will ask that there be placed before the witness Exhibit No. 4, which I am sure is this catalog.

Q. There is Exhibit No. 4 before you. Now, can you tell me from that catalog the weight of a seven-inch spiral centralizer?

A. Do you have any specific place it is located so I don't lose so much time?

Q. No, I haven't. Do you have any recollection of what the approximate weight was in pounds?

A. No, I don't. At different times there were many different springs and different sizes. There could be one of five or six weights. I would say approximately a weight around 26 pounds, but they could run up as high as 40 pounds. [1846]

Q. Let us get it as nearly as we can by reference to this and Exhibit 43 also. Will you place before him Exhibit 43?

(Testimony of Jesse E. Hall, Sr.)

A. At the present time I don't see any quotation of weight at all.

Q. Your best estimate, then, at the present time from the catalog that you have before you would be somewhere between 26 and 40 pounds, is that correct?

A. No, not from this catalog, doesn't give any information at all that I see.

Q. Well, your recollection, then, disregarding the catalog.

A. Oh, I have made them as low as probably 10 pounds up to 40 pounds. I believe we have made some that go up to a hundred pounds, close to it.

Mr. L. E. Lyon: I believe it has not been placed in evidence. Has it been placed in evidence, 43? The last catalog was Exhibit CR, I believe.

Also place before the witness——

Mr. Scofield: That is the same as Exhibit 44, I believe.

Mr. L. E. Lyon: What is?

Mr. Scofield: That 43.

Mr. L. E. Lyon: 43 and '4 are the same on your list?

Mr. Scofield: Yes. 44 was admitted into evidence May 25, 1949. [1847]

Mr. L. E. Lyon: I would like to have FFF also.

Q. I refer you to Exhibit FFF, Mr. Hall, and ask you to refer to page 11 under the words, "spiral centralizers 7-inch." It gives the list price as $33 and the weight in pounds as 25 pounds, is that correct?

A. Spiral centralizers, weight 25 pounds, the

(Testimony of Jesse E. Hall, Sr.)

price is $33; and that is on page 11, Exhibit FFF.

Q. Would it be a fair statement, Mr. Hall, to say that in 1947 the price of spring steel of the character used in a spiral centralizer was somewhere between 9 and 15 cents a pound?

A. I would be glad to stipulate that if you will refresh my mind from any document you have got. I don't recall the price of steel.

Q. You were manufacturing at that time, were you not? A. I were.

Q. Well, you have no recollection of what spring steel was costing at that time?

A. No. I paid various prices. I bought lots of steel on black market; I bought various different ways.

Q. What prices did you pay for it over the range?

A. I don't have the records and it is a matter I do not remember.

Q. All right; I will ask you to produce the records.

A. I think we paid, as I recall, in some [1848] instances possibly as high as 18 to 20 cents a pound and then had to go after it.

Q. Would it be fair to say that you could go down as low as 9 cents for spring steel at that time, or is that too low? A. I would think so.

Q. You think it is too low?

A. I don't have anything at this time to back my judgment on it.

Q. But certainly 9 to 18 cents would cover the range, then? A. That is right.

(Testimony of Jesse E. Hall, Sr.)

Q. About how long in man-hours did it take to make a seven-inch centralizer in your place of business in October of 1947?

A. I don't have any record of that. I haven't the least of records at that time.

Q. You were in the manufacturing business, weren't you? A. That is correct.

Q. Was it a matter of a half an hour, an hour, two hours, or what total time? Just an estimate. I don't want it down to minutes.

A. I don't recall at this time what time it taken.

Q. Well, can you give me an estimate? [1849]

A. Oh, I think a welder probably could weld up four centralizers a day.

Q. Four centralizers a day. How about in the forming of the spiral blades and also the formation of collars; how long would that take?

A. Well, at that time most of them were formed by hand. I think a man could probably bend and form 50 springs a day.

Q. How many springs were there in each seven-inch centralizer?

A. As well as I recall it—I don't see it here—it is six.

Q. I think that is according to the picture on the face?

A. Well, that is liable to be a different size. The larger the size, the more springs they had in them.

Q. Then it was somewhere around six; so that a man could bend the springs required for the making of approximately eight spiral centralizers a day, is that correct? A. No, I don't believe so.

(Testimony of Jesse E. Hall, Sr.)

Q. I am taking it as an eight-hour day. You said 50, and there are six required.

A. They are cut up into five or six different jobs.

Q. What is that?

A. It is cut up into five or six different jobs. One man probably would never get it done. [1850]

Q. I see.

Mr. Scofield: If your Honor please, unless this testimony is in some way connected to the issues here, I think it is entirely immaterial.

Mr. L. E. Lyon: We will show very shortly, your Honor. It is entirely preliminary.

The Court: Proceed. Overruled.

Mr. L. E. Lyon: All right.

Q. Now, you say it is divided up into many jobs. You say that he could not form the spring bow members for as many as eight centralizers a day; was that too many?

A. No. I think he would form a little more than six in eight hours, around six to eight.

Q. Around six to eight a day. There are two collars in a spiral centralizer, one at the top and one at the bottom, and those were formed collars, were they not? A. Correct.

Q. And they were formed in a die?

A. That is correct.

Q. How many of those could a man form in a day?

A. Well, that is broke up into—that is broke up into five different jobs formerly.

Q. That is right; but I am carrying out all of those different five jobs. How many complete cen-

(Testimony of Jesse E. Hall, Sr.)

tralizer collars could he form in a day's work, one man? [1851]

A. I would say he could form enough to make the six or eight centralizers.

Q. So that the bottleneck was the formation of the collars and the formation of the spring bow elements. They could form six or eight in a day with two men doing it, and a welder could weld up about four such centralizers in a day; so when we go through, we come out with four men to make six or eight centralizers a day, is that correct?

A. No; they should make more than that.

Q. Well, how many more?

A. Well, it is hard for me to say. It depends on the size of the order. When you get an order of 500 of anything, you are constantly working. You cut up a lot of pieces. When you get a small order, then costs run up. You would have to place an order, a figure on it. I would say an order of eight, your cost on your centralizers, and not overhead in the office, or not overhead in the business, would possibly be about $12, $12.50. Over-all cost would probably cost you $16 or $18. If you had different amounts, the price would fall. When it falls down to a certain place, then it levels off.

Q. If you were going to make a hundred how far would it fall down?

A. I don't have those figures. I would just be grabbing them out of the air to give them to [1852] you.

Mr. Scofield: Your Honor, I don't think these people are entitled to this information, either. After

(Testimony of Jesse E. Hall, Sr.)

all, this is information as to manufacturing costs of a competitor here. I think I should object to that.

The Court: Overruled.

Q. (By Mr. L. E. Lyon): Would it fall down as much as $10 if you were making 100 of them, that is, from what you stated—what was it $12 or $14—$12 to $16, if you were making eight or 10; would it fall down as much as to $10 if you were making 100 of them at a time?

A. You mean $10 off the grand total?

Q. No; $10 apiece for them.

A. No, I don't believe so.

Q. It would not fall down that far. Did that include both labor and materials that you are talking about there, that $12 to $16, or the figure of $10 that I used; were you considering both labor and materials?

A. I was figuring a completed article.

Q. So that taking it on a quantity order, it would be a fair estimate that the cost of such a centralizer would be between $10 and $18, is that correct, depending upon the quantity produced at one time?

A. Well, I don't believe you would get as low as $10 on anything.

Q. Well, it would not go below 10. Not below $10 [1853] but up to $18 apiece?

A. Well, I would rather say it wouldn't go below $12.50.

Q. Not below $12.50 and not above $18, is that correct?

A. No, I wouldn't say that. I think we have figures of centralizers, even seven-inch, costing as high as $47.

(Testimony of Jesse E. Hall, Sr.)

Q. Did you ever sell centralizers from the Weatherford Spring Company, standard centralizers at a sale price of $1.93 per centralizer plus 10 per cent?

A. Yes; we have sold centralizers. We are selling now centralizers of the Weatherford Oil Tools—I have nothing to do with it. I think they have several thousand of a certain type they are selling now at something like $20 a ton.

Q. Did you sell centralizers—when I say "you," I mean you, personally, not the Weatherford Oil Tool—in 1947 at a stated cost price of $1.93 plus 10 per cent?

A. I don't recall what I have sold them at. Whatever the cost price of a certain specific type of centralizer was what it brought. Lots of centralizers was made very small and very cheap, and some made very expensive.

Q. Well, did you ever sell anything but standard centralizers to the Mene Grande Oil Company or the Gulf Companies in Venezuela?

A. No. I think the centralizers sold to them was cut down to a very minimum, was cut to a short centralizer and a light spring and a light collar. I think that they was [1854] cut to a very minimum in size and a very minimum in manufacturing.

Q. And that they cost per piece—was there any difference? Did your cost estimates that you gave me include those centralizers?

A. No. I was trying to give you a standard spiral eliptic centralizer.

Q. What was the weight of those cut-down cen-

(Testimony of Jesse E. Hall, Sr.)

tralizers, seven-inch spiral centralizers, that you were talking about?

A. They were whatever the cost——

Q. What was the weight, I asked.

A. Well, that I couldn't give you, Mr. Lyon.

Q. Well, how much less, if any, did they weigh than your so-called standard centralizers?

A. Well, I would just be guessing.

Q. All right; guess.

A. I would say probably a half or a third.

Q. A half or a third?

A. Probably wasn't that in size, of the larger size.

Q. Did they have six bows on a seven-inch centralizer? A. No; I think they had five.

Q. Did they have two collars, one at each end?

A. They certainly did.

Q. Were they made of spring steel?

A. No. The springs was made of spring steel; the [1855] collars was made of cold roll.

Q. Cold roll. Was there a price differential between cold roll and spring steel at that time?

A. Well, I don't know at that time. Sometimes one is higher than the other.

Q. But generally, they run along about the same price range?

A. No. I believe that spring steel is quite a little higher, but sometimes the market is better on a cold roll.

Q. How much difference is there? Does cold roll get down to as low as 9 cents?

A. Oh, I have seen it down as low as 5 cents.

(Testimony of Jesse E. Hall, Sr.)

Q. 5 cents, and as high as what in 1947 I am talking about?

A. I think as high as 20 cents, 22 cents.

Q. The average over the period being an average, then, of about 12 cents a pound, is that correct?

A. No.

Q. At that time?

A. A little higher than that. It didn't get down to that low figure in 1947. It was back in 30-some odd when it was down in the lower figures.

Q. All right. We come out, then, with these spiral centralizers that you were selling to the Mene Grande Oil Company in Venezuela in 1947 weighing about 15 pounds, 12 [1856] to 15 pounds, is that correct?

A. I would like to find some data on it before I would say it is correct. It is very close to it.

Q. Very close to it. Could a man fabricate more of these small centralizers, these seven-inch centralizers with five bows and which weighed about 12 to 15 pounds, than he could the standard centralizers in a day's time? A. Yes.

Q. How many more?

A. Well, I am not able to answer that at this time, but the smaller equipment that you handle, and the small equipment you don't go into detail of accuracy, you don't go into detail of welding, and you turn it out much faster.

Q. Well, could he turn out two for one?

A. Well, that would just be a dogmatic assertion, too. Possibly he could, possibly three to one.

(Testimony of Jesse E. Hall, Sr.)

Q. Maybe three to one, but not more than three to one?

A. Well, I wouldn't say that. It would depend on how——

Q. Haven't you any recollection at all of how many you turned out of that sized centralizers, of the spiral centralizers, in a day?

A. I remember I made centralizers for a long while myself and right up to that date.

Q. All right. How many did you turn out yourself up to that time in a day's work, as you [1857] say?

A. I used to turn out, and do some other little things, from four, six to eight when I worked real hard.

Q. And that is of this light weight, 12 to 15 pounds, seven-inch centralizer?

A. No. I am talking about the expense. I don't believe I ever turned in and worked and made any of the real small ones.

Q. I am asking you with reference to your recollection of the small seven-inch centralizers of the type sold to the Mene Grande Oil Company of Venezuela in October of 1947. How many of those could be turned out in your shop per day per man?

A. I would say around 20.

Q. Around 20 per day per man. Do you recall what the price was to the Mene Grande Oil Company for those centralizers?

A. Not at this time.

Q. If the price was around $33 for a seven-inch

(Testimony of Jesse E. Hall, Sr.)

centralizer to the Mene Grande Oil Company, would that indicate that it was a standard seven-inch centralizer that you were selling them at that time?

A. Well, they are all standard of the different type.

Q. I mean, take this 25-pound weight that is shown in your catalog, Exhibit FFF.

A. It could have been. I think they got some of [1858] every description.

Q. I hand you a photostatic copy of a statement of the Weatherford Spring Company of Venezuela to the Mene Grande Oil Company, C. A., San Tome Terminal, Barcelona, S. A., Venezuela, dated 12-22-47. I will ask you if you can identify that, and will refer you to item No. 7 which calls for 500 seven-inch spiral centralizers, the per piece price being $34.65, and the total being $17,325. I will ask you if that refreshes your recollection any and if you can identify that invoice?

A. I cannot identify this invoice because I had nothing to do with it. I can identify it as the Weatherford Spring Company of Venezuela.

Q. You know nothing about that invoice nor the goods that were sold on that invoice?

A. No, I do not.

Q. What is the total of that invoice?

A. The total is $156,194.

Q. Did you ever receive a check for that amount yourself?

A. I couldn't tell you. I received many checks from the Gulf and from the Mene Grande.

(Testimony of Jesse E. Hall, Sr.)

Q. Can you identify this invoice as being a true invoice of the Weatherford Spring Company of Venezuela to the Mene Grande Oil Company?

A. No, I can't. [1859]

Mr. L. E. Lyon: Will you stipulate, Mr. Scofield, that that is a true copy of the invoice, it being a copy of the invoice which is referred to in the findings of fact offered in evidence in the Smith case and a copy of the invoice offered in evidence in that case? [1860]

Mr. Scofield: I can't stipulate to the fact, that is, I don't know as to this particular invoice. I would have to check it with the record of the case.

Mr. L. E. Lyon: I will ask that this invoice be marked for identification, your Honor, as defendants' exhibit next in order.

The Court: It will be so marked.

* * *

Q. (By Mr. L. E. Lyon): You did not state, Mr. Hall, that you did not personally receive at Weatherford, Texas, a check in the sum of $156,194, the precise amount of Exhibit CY for identification, is that correct?

A. If I received any check, and all checks I received are of record.

Q. Well, do you recall seeing that particular check for $156,194 in Weatherford, Texas?

A. What?

Q. Did you receive that check at Weatherford, Texas?

A. I couldn't tell whether I did or not.

(Testimony of Jesse E. Hall, Sr.)

Q. All right. I will hand you a photostatic copy of check No. 09123, issued at Maracaibo, Venezuela, February 17, 1948, in the sum of $156,194, and payable to the Weatherford Spring Company, Weatherford, Texas, and will ask you if you [1861] received the original of that check at Weatherford, Texas?

A. It so states on the back, that it was received by the Weatherford Spring Company.

Q. And endorsed by you, isn't it?

A. I don't see any endorsement on it.

Q. What is the endorsement that you find on the back of it?

A. I don't see any except a stamp.

Q. Can you read the stamp?

A. I can just barely glance at it. I can't read the letters, it is so small.

Mr. L. E. Lyon: I will offer in evidence the photostatic copy of the check which is identified, being the check of the Mene Grande Oil Company as Exhibit CA, being check No. 09123, dated Maracaibo, Venezuela, February 17, 1948, and being in the sum of $156,194 and no cents. [1862]

* * *

The Clerk: Exhibit CZ in evidence.

* * *

Q. (By Mr. L. E. Lyon): I hand you another photostat, Mr. Hall, which is an invoice from the Weatherford Spring Company of Weatherford, Texas, to the Weatherford Spring Company of Venezuela. Just one moment.

I hand you a further photostat, Mr. Hall, being

(Testimony of Jesse E. Hall, Sr.)
a photostat of an invoice of October 2, 1947, from the Weatherford Spring Company to Weatherford Spring Company of Venezuela, and I will ask you if you can identify this photostat?

A. I can identify the Weatherford Spring Company of Venezuela and the shipping agent, but I can't identify the—I can identify the other items as items that were sold but I don't know about the amounts.

Mr. L. E. Lyon: I will ask you, Mr. Scofield, if you will stipulate that that is a true copy of the invoice of that date from the Weatherford Spring Company to the Weatherford Spring Company of Venezuela of October 2, 1947, which is a photostat of the exhibit used in the Smith case before the District Court of Texas?

Mr. Scofield: No, I am not willing to stipulate that. It says, "Invoice Factura," but it is actually just a shipping paper. It is not an invoice.

The Court: Let it be marked for [1863] identification.

Mr. L. E. Lyon: Let it be marked for identification.

The Clerk: As Defendants' Exhibit DA?

* * *

Q. (By Mr. L. E. Lyon): I hand you a further photostat, Mr. Hall, which is dated October 3, 1947, which is an invoice I believe from the Weatherford Spring Company to the Weatherford Spring Company of Venezuela and which includes the statement of item No. 7 of 675 7-inch spiral centralizers

(Testimony of Jesse E. Hall, Sr.)

at the piece cost of $1.93 and a total of $1,302.75, and I will ask you if you can identify that as a true copy of the Weatherford Spring Company invoice to the Weatherford Spring Company of Venezuela?

A. Yes, I can identify it as a true copy.

Mr. L. E. Lyon: I will offer this invoice in evidence.

The Court: Is there objection?

Mr. L. E. Lyon: As defendants' exhibit next in order.

Mr. Scofield: Objection, your Honor, that no foundation has been laid with reference to the unfair competition.

The Court: Is this part of the matter you took up?

Mr. Scofield: Yes, your Honor.

Mr. L. E. Lyon: There is an element of unfair competition of selling below cost from one company to another in competition, [1864] in Venezuela, as established by the testimony of this witness.

Mr. Scofield: These people were not competitors in Venezuela, your Honor.

The Court: Who are "these people"?

Mr. Scofield: Well, the defendants.

Mr. L. E. Lyon: They certainly were, according to the testimony of your own witness.

The Court: They claim to be, don't they?

Mr. Scofield: I don't think they even claimed to be.

The Court: Of course, sometimes one competitor

(Testimony of Jesse E. Hall, Sr.)

looks down his nose so sharply at another one that he can't even see him.

Mr. Scofield: That is true.

The Court: Objection overruled. It is received in evidence.

The Clerk: Exhibit DB in evidence.

* * *

Q. (By Mr. L. E. Lyon): I hand you two other photostats, Exhibits from the Smith case in Texas. I will ask you [1865] if you can identify these photostats as being true photostats of the Weatherford Spring Company invoice to the Weatherford Spring Company of Venezuela and the Weatherford Spring Company of Venezuela to the Compana Consolidada, and you tell me the rest of it, if you can. I can't pronounce it.

A. I can identify the invoice from Weatherford Spring Company, Weatherford, Texas, to the Weatherford Spring Company of Venezuela.

I cannot identify the other invoice.

The Court: Let the document which the witness has identified be marked Defendants' next exhibit, as Exhibit DC.

Mr. L. E. Lyon: The one he cannot, your Honor?

The Court: The one that he does identify.

Mr. L. E. Lyon: The one that he does identify is the one on top. That is Exhibit DC. [1866]

* * *

Mr. L. E. Lyon: I would like to have the file wrapper of the No. 55,619 application, which is Plaintiff's Exhibit No. 69, please, Mr. Clerk.

(Testimony of Jesse E. Hall, Sr.)

Q. I place before you, Mr. Hall, Exhibit No. 69. Pardon me. I will take it out of your way, if that is bothering you.

The Witness: It is not bothering me. It is bothering you.

Q. (By Mr. L. E. Lyon): And will refer you to a paper on page 15 of the file wrapper and there designated as Exhibit A and which accompanied paper No. 3 on filing in the Patent Office, paper No. 3 being on page 14 entitled, "Petition to Make Special," and I will ask you if that is your signature on that page? A. It is. [1867]

Q. And at that time you took oath before a notary public, Gwen Harris, in the County of Parker, Texas, to the truth of the allegations set forth in that affidavit to which you swore on that date, and that date being the 30th day of October, 1948?

A. That is a document, an affidavit taken by a notary public. I don't recall her name, if her name is Gwen Harris.

Q. Her name is stated on it as Gwen Harris.

A. That is a true document.

Q. And you swore to that document before that notary at that time as the truth of the statements therein set forth? A. That is correct.

Q. Now, in the statements therein, the statement that you swore to there at that time reads:

"Jesse E. Hall, being first duly sworn, deposes and says that he is the applicant named in the above-identified application; that there is actually

(Testimony of Jesse E. Hall, Sr.)

on the market a device infringing the claims of the application; that he first discovered the infringement on or about August 15, 1948."

Now, what device did you discover upon the market on August 15, 1948, that you refer to in that affidavit?

A. The Multiflex centralizer, on about that date, that is, the date that I figured out, right close to that date, my son notified me that he saw a number of those centralizers being [1868] manufactured down here on Los Angeles Street, in Los Angeles, California, and on or before that date, close to it, I notified Mr. Scofield.

Q. You do not agree, then, with your attorney, who also filed an affidavit on that day, that the device referred to was not the Multiflex scratcher but as shown in his reply to the Patent Office he admitted that he and you knew of the Multiflex scratcher at least as early as January, 1948, and referred to the same in a conference at the Ben Milam Hotel with Mr. Barkis, Mr. Wright, Mr. Scofield, and yourself?

A. I was not in their conference. I left the conference.

Q. I believe in your answer you stated, "Multiflex centralizers." You mean the scratchers, if you said, "centralizers," in that respect, don't you?

A. Well, I don't recall it being Multiflex only in just a vague way. It was a scratcher. I am very sorry that I said centralizer. Your people call them

(Testimony of Jesse E. Hall, Sr.)

centralizers so much I kind of get the habit of doing it.

Q. You were not present at that conference held at the Ben Milam Hotel which I just referred to, in Houston, Texas?

A. Only for just a short time, just a very few minutes.

Q. You don't know that, in that conference, then, as [1869] admitted in these exhibits here, that your counsel stated to Mr. Barkis and Mr. Wright that he considered the Multiflex scratcher an infringement of the claims that they expected to obtain?

A. No, I do not.

Q. You don't know that admission of that fact is made in the written document?

A. I have no memory or no recollection of any admission. [1870]

* * *

Mr. L. E. Lyon: Will you hand me Exhibit SS, Mr. Clerk? That is a letter of December 5, 1947, from Dr. Foote to Mr. Houghton of the Gulf Research and Development Company.

Q. I place before you, Mr. Hall, Exhibit SS, a letter, and refer you to the fourth paragraph of this letter which reads:

"During a recent discussion of the Multiflex scratcher Mr. Hall of Weatherford Spring Company maintained that when the Multiflex scratcher was used [1871] in a well the bristles would assume the position shown at the left of Figure 1, and that when this occurred it would be an infringement of

(Testimony of Jesse E. Hall, Sr.)

one of his allowed claims. We doubt this contention is valid but would appreciate your opinion on it. It is of interest to know that the wires were not distorted in the manner claimed by Mr. Hall during our laboratory tests."

That is a letter written by Dr. Foote of the Gulf Research and Development Company to Mr. Houghton, patent counsel for that concern, dated December 5, 1947. I will ask you if you recall that position that you took before Dr. Foote as stated in the paragraph of that letter which I have read to you with reference to the Multiflex scratcher on or prior to December 5, 1947.

A. I don't have any recollection of ever talking to Dr. Foote about this. I rather think he talked to Mr. Scofield.

Mr. L. E. Lyon: I didn't get the remainder of the answer. May I have it, please?

The Witness: I rather think maybe he was talking to Mr. Scofield later, before, or not. I don't know. I have no recollection of the talk with Dr. Foote about the Multiflex.

Q. (By Mr. Lyon): You mean you think that Dr. Foote may have been talking to Mr. Scofield when he referred to Mr. [1872] Hall?

A. I don't know. I just had an idea. I never discussed to Dr. Foote at all about patent matters on this. Dr. Foote, the only time I ever knew about being present, was when I came back from Venezuela on that matter, and that certainly wasn't talked about then. I remember of talking about the

(Testimony of Jesse E. Hall, Sr.)

Multiflex and the Multiflex to the Gulf was on the market at the time I was talking about it myself. Now, when that was, was when it would be. I don't know when it was.

Q. You will note the initials to that letter are "L.W.V." That refers to Mr. Vollmer, does it not?

A. Yes. And I think if you will go, now you refresh my memory, back to the deposition, when Mr. Vollmer's deposition was taken—and that is in your records here—and you can find out when and who that discussion was; and I am sure that it was not with me and I am sure Mr. Vollmer said that.

Q. I will be glad to show you that at any time. But that indicates, according to the practice that you knew of in the Gulf Research & Development Company of Mr. Vollmer to dictate these letters for Mr. Foote's signature?

A. I don't know what their practice is.

Q. But you at the present time have no recollection of any conference with reference to the Multiflex scratcher, either with Mr. Vollmer or Gulf Research & Development Company, Mr. Teplitz or Dr. Foote which preceded or was on [1873] December 5, 1947, in which you referred to "allowed claims" and asserted that the Multiflex scratcher was an infringement of such allowed claims as of that date?

A. I have no recollection of that date.

Q. Would you state that such did not take place?

A. How is that?

(Testimony of Jesse E. Hall, Sr.)

Q. Would you state that said conversation did not take place at the time mentioned?

A. I don't think I ever had any conversation with them about Multiflex scratchers.

Q. You would not take the position that Dr. Foote or Mr. Vollmer's statement in that letter was incorrect, would you?

A. I don't believe that he says that I seen the Multiflex.

Q. Well, you will accept the statement of Mr. Vollmer or Dr. Foote as set forth in the letter of December 5, 1947, as being a true statement, will you not?

A. Well, now, you are asking me a question there that I don't have any answer. If I say that I don't accept it, then next day they will have that on their desk for them to read that I have said so about it, but I don't know about their statement.

I recall at one time talking to them there, and I would have been glad to have talked about it and have been glad to [1874] have found it out if it was the case, because I would have certainly went to Mr. Scofield with it. And I recall them talking to me, and all they had and all I got was about some fingers, as you people call it, and it seems to me like a later date.

Q. You stated that your recollection is that you talked to Gulf Research & Development Company about the Multiflex scratcher at the time they became on the market; you recall that, don't you?

A. At the time that I realized it was on the mar-

(Testimony of Jesse E. Hall, Sr.)

ket, when you was actually out selling them. I don't know about the period of time you were experimenting on them at all.

Q. At the time that you gave this affidavit which is a part of Exhibit 69 and to which you swore on the 30th day of October, 1948, and which is stamped as received in the Patent Office "RC-Div. 32, November 12, 1948, U.S. Patent Office," did you have before you or did you have any discussion with Mr. Scofield with respect to the structure which you referred to in that affidavit and which you asserted to be an infringement of the claims?

A. All I recall, and the first knowledge that I knew of the Multiflex——

Q. Now, just answer the question, please, that I asked you.

A. That is what I am trying to. [1875]

Q. Did you have any structure there before Mr. Scofield at the time you signed this affidavit?

A. I did not.

Q. Did you at any time on or about the 30th day of October, 1948, present to Mr. Scofield, or on the 1st of November, 1948, a Multiflex or any other scratcher made by B & W which you state that you had then found on the market for the first time?

A. I don't recall it. I recall of making a trip to Los Angeles. My son John notified me that they found knowledge of another scratcher being sold, and told me how it looked; and I made a trip to Los Angeles. I went down here to Adams-Campbell

(Testimony of Jesse E. Hall, Sr.)

people that makes B & W scratchers, and I seen a lot of parts and pieces through glass windows there. And I think that is the first time that I made a complaint or had the knowledge that they was on the market. I am quite sure now that that is when I notified Mr. Scofield. Mr. Scofield got in touch with Mr. Caughey and Mr. Caughey says: "Yes, we are making them," or whatever is in the letter. I think the information that you was making them came from Mr. Caughey. It is beginning to get clearer to me as I recall how I——

Q. You state at the time you signed this affidavit you did not present any structure or any scratcher to Mr. Scofield? [1876]

A. I don't recall of ever having a structure. We might have bought one. We generally do when we find one on the market, go buy a specimen of whatever you find is infringing.

Q. And, to the best of your recollection, it was a Multiflex scratcher, is that correct?

A. No, it isn't. All I recall, there was a scratcher that infringed and, to the best of my recollection, it was a scratcher that had a sidewise bristle. And I have always considered the Multiflex and the Nu-Coil, both, did that; so it could have been either one of them.

Q. You know that the Nu-Coil was not offered on the market until 1949, don't you?

A. Well, I now see these two replicas here that you taken to the Gulf. After we got in this case here you produced them and Mr. Caughey stated

(Testimony of Jesse E. Hall, Sr.)

here in court you had never made none and sold, and only had two; those went out. They could have been the ones that had been discussed.

Q. As a matter of fact you saw those two replicas of Exhibit 88, the Nu-Coil inside-mounted, coil-type scratcher at the Gulf Research & Development Company in July 28, 29, or 30th of 1947, didn't you?

A. I don't believe so. I don't believe.

Q. And it was at that time that you called the fact of their being there to Mr. Scofield's attention, which resulted [1877] in——

A. I recall of calling attention to that, of a letter or a telegram or something that they had given us notice of.

Q. At that time? A. At that time. [1878]

Mr. Scofield: In 1927?

The Witness: No. In 1947.

Mr. L. E. Lyon: In 1947.

The Witness: And I think that is of record, too, here. I think it is of evidence.

Mr. L. E. Lyon: Your Honor, I don't have in the courtroom at the present time the printed brief to which I referred and I will have to bring it in at the next session of court. It is apparently among my papers at the office and I don't have them here, but I will bring them in at the first opportunity.

Did you have those letters marked for identification by the clerk, I mean those letters of October, 1945-June, 1945? So that I will not delay the examination of this witness while I read this lengthy correspondence, I will take up another point at the

(Testimony of Jesse E. Hall, Sr.)

present time, until I have an opportunity to read these letters which have just been produced?

The Court: Have they been identified on the record?

Mr. Scofield: Yes, sir.

Mr. L. E. Lyon: They have been identified as Exhibits 194 for identification, 195 for identification, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205 and 206, your Honor.

The Court: Exhibits 194 to 206?

Mr. L. E. Lyon: That is 12 of them, yes, sir, your Honor. [1879]

The Court: Inclusive, which are correspondence produced by Mr. Scofield?

Mr. L. E. Lyon: Yes, sir, your Honor.

The Court: ——earlier this afternoon.

Mr. L. E. Lyon: Yes, your Honor.

The Court: Can you describe that correspondence generally?

Mr. L. E. Lyon: What is that?

The Court: The correspondence generally is described as——

Mr. Scofield: It is correspondence, your Honor, which was had between Mr. Hall and myself preliminary to the filing of the application, Exhibit X, which is Mr. Hall's application No. 627,013.

The Court: Very well.

Mr. L. E. Lyon: I would like to have exhibit which is the two dollar and a half royalty demand, Exhibit——

Mr. R. F. Lyon: JJJ.

(Testimony of Jesse E. Hall, Sr.)

The Court: Are you referring to Defendants' letter?

Mr. L. E. Lyon: No. That is the letter they sent. JJJ, is it?

Mr. R. F. Lyon: JJJ.

Mr. L. E. Lyon: JJJ.

This is the January 18th copy. This is the copy of the same thing being dated the 18th. I wanted the one that is [1880] dated the 12th.

Mr. Scofield: It is connected with Exhibit WW.

Mr. L. E. Lyon: It is connected wth Exhibit WW. Exhibit WW was not offered. You have Exhibit WW there. It is a photostatic copy of the injunction and the letter attached.

The Clerk: Here is Exhibit WW.

Mr. L. E. Lyon: Give me Exhibit WW and I will use it.

Q. I place before you a letter which is quoted in full in Exhibit WW except for the date which in Exhibit WW is January 12th and in the photostatic copy I hand you it is January 18th, both being 1952, which is referred to as the two dollar and a half royalty letter. I will ask you what relation the two dollar and a half royalty price bears percentagewise to the total sales price of a seven-inch scratcher.

The Court: The sales price by whom?

Mr. L. E. Lyon: By the Weatherford Oil Tool Company, to the trade?

The Witness: Roughly, I would say about 30 per cent.

Q. (By Mr. L. E. Lyon): And on a 5½-inch

(Testimony of Jesse E. Hall, Sr.)

scratcher, what is the percentage of $2.50 to the total sales price of the Weatherford scratcher to the trade? A. That is correct.

Q. About the same, you say?

A. That is about correct. It might be a little less or a little more. [1881]

Q. You say it is about 30 per cent on each, whether it is a 5½-inch or a 7-inch scratcher?

A. I don't think it makes much difference. If you have a price list, I will be glad to——

Q. Now, when you sent this letter, to whom besides the particular addressee did you send that letter? And in that respect I will ask you if that list to whom this letter was sent is available, Mr. Scofield.

A. If you want to know who it went to, I requested Mr. Scofield to send it to a list of the oil companies, which was furnished, that were buying the scratchers, the centralizers from B & W, that were boxed with the scratchers showing a method to use them, and then this method patent in them, and then the ones we adhered to, that had the royalty, that you were charging them a 60 cent royalty, we tried to pick those companies.

Q. I see. That list that you sent to Mr. Scofield that you directed this letter of the $2.50 royalty be sent to, do you have it?

A. I don't have it. Mr. Scofield has it.

Q. All right. Then, I will ask Mr. Scofield to produce the list referred to by the witness.

I hand you some papers in seven pages and I will

(Testimony of Jesse E. Hall, Sr.)

ask you if this is a list that you refer to or is this a recently prepared list? [1882]

A. I had no list. I only made the complaint.

Q. I see.

A. I think the list was probably gotten from the Weatherford Oil Tool. I don't know where it came from.

Mr. L. E. Lyon: And this list which you have handed to me, Mr. Scofield, which is in seven pages, is a listing of the companies to whom the so-called two dollar and a half royalty letter was sent, and by that I mean the letter which is in evidence as Exhibit JJJ and which is quoted in the injunction order of this court on January 25, 1952?

Mr. Scofield: Yes, this list represents the companies to whom the letter was sent; in the first column after the name of the company there is listed the dates upon which the letter was sent; and in the list at the right-hand column on the page there is dated any subsequent correspondence that was had. This was made up by my office from the letters and is not a list that Mr. Hall prepared. I don't recall that he has indicated that there was any list given to me. That is, I think some of the companies' names, some of the names of the companies were obtained by telephone from different sources.

I might say, too, that the last column at the right also indicates the date upon which the injunction was sent out to these same companies.

The Court: By the injunction you are referring to—— [1883]

(Testimony of Jesse E. Hall, Sr.)

Mr. Scofield: Defendants' Exhibit WW.

The Court: Well, do you wish to have this list marked as a defendants' exhibit?

Mr. L. E. Lyon: Yes, your Honor. I just want to get a tabulation of the number here.

The Court: Let it be marked Defendants' Exhibit DE, Mr. Clerk.

The Clerk: DE, if the court please.

Mr. L. E. Lyon: I will offer it in evidence.

The Court: It is received in evidence.

* * *

Mr. L. E. Lyon: It being a list of 114 separate companies. Pardon me, your Honor, for taking the time to count them at this time, but I wanted the record to show without reference to the list itself the number of companies to whom that letter was sent.

The Court: That letter you refer to is——

Mr. L. E. Lyon: Exhibit JJJ is the letter I am referring to and as shown, which has just been received in evidence. There are 114 separate companies on that list, and that list being Exhibit DE.

The Court: Very well.

Mr. L. E. Lyon: Now, I also requested, Mr. Scofield, in the same demand that you supply me with copies of correspondence [1884] that you had with these companies, pursuant to this letter which you sent out. Do you have that correspondence?

Mr. Scofield: That correspondence is in the box for you on the table.

Mr. L. E. Lyon: In this box?

(Testimony of Jesse E. Hall, Sr.)

Mr. Scofield: That is right, and in this bundle of letters that I put on top of the box.

Mr. L. E. Lyon: I would like to know if it may be stipulated that you sent out to each of these companies a letter in the same words and figures, and this is an absolute duplicate of it, except for the addressee, as shown by Exhibit——

Mr. R. F. Lyon: BX.

Mr. L. E. Lyon: No. That letter in here that states it is a copy of the letter that you sent out to the trade—you sent out a letter with the injunction. A copy of that letter I offered here in evidence this morning.

Mr. R. F. Lyon: TTT.

Mr. L. E. Lyon: TTT. May I have Exhibit TTT?

The Clerk: Yes, sir.

Mr. L. E. Lyon: Here is a copy of Exhibit TTT. Will you stipulate that that is a copy of the letter and this is a copy of the form of letter and enclosure that you sent to each of the 114 companies that are listed on Exhibit DE, Mr. Scofield? [1885]

Mr. Scofield: As I have indicated previously, I am willing to stipulate that the companies listed on Exhibit DE were sent a letter such as appears on the injunction that is dated January 12, 1952, the injunction being marked Exhibit WW. [1886]

Later, within 15 days, as is shown on Exhibit DE, there was sent to some companies the letter Exhibit TTT with a copy of the injunction, and the dates of the respective letters are indicated on the list, Exhibit DE.

(Testimony of Jesse E. Hall, Sr.)

The Court: Do you accept the stipulation?

Mr. L. E. Lyon: I will accept the stipulation, your Honor.

Q. I take it from your testimony, then, Mr. Hall, that an effort was made to send a letter to every known customer of B & W like Exhibit JJJ, is that correct? A. That is not correct.

Q. Do you know of any companies, any company that you know of that was a customer of B & W that you did not send such a letter?

A. I only asked for the information after the report that I turned in, send to the companies that we had knowledge or belief that they were purchasing scratchers from you people; that you were putting on the billing that you were charging them 60-cent royalty of that and extending to them a license under your method; and also on your boxes that you were shipping to them where you were placing the method, and the method only, and the number of the patent on that method and a picture of the scratcher on it.

Q. You mean that you had personally determined, then, that each of the 114 companies set forth on Exhibit DE— [1887] and I state 114 from a hurried count; it may be 116 or it may be 112— that you had personally determined that each one of these companies was a customer of B & W and had received from B & W scratchers, either Multiflex or Nu-Coil, or wall-cleaning guides on an invoice such as is set forth in the injunction issued by this court on January 25, 1952, is that correct?

(Testimony of Jesse E. Hall, Sr.)

A. I would like for you to qualify your question. What do you mean "personally determined"?

Q. Just what I said; you had personally found out that each one of these companies was a customer of B & W and had made such a purchase from B & W?

A. I did not turn in the reports. I asked him for the ones, the different representatives and different districts, to their beliefs, that the ones had been using the B & W under this so-called billing.

We had had several reports out about that, first, and if they had seen these tags on their boxes, and those were the only ones.

I might state here, if we were to send them to all of the customers, it would probably have went into several thousand. It is a very small portion of the customers, when we had to pick out what people they did. I don't know how thorough they picked them out, because I don't believe I named a custimer except the people at Nocona. [1888]

Q. I notice in this list that you sent notices to the Oil Well Supply Company at three places, in Oil City, Dallas and Los Angeles; that you sent notices to the Standard Oil Company of California at La Habra, San Francisco, and Taft, California; that you sent only one such notice to the Gulf Oil Company at Pittsburgh, Pennsylvania, and not to any of their field offices, as you did with respect to the other companies that I have noted.

Can you explain why you failed to notify all the field offices of the Gulf Oil Company and notified

(Testimony of Jesse E. Hall, Sr.)

the field offices of the other customers of B & W?

A. I cannot.

Q. The Gulf Oil Company has such field offices, too, hasn't it? A. That is correct.

Q. In Tulsa, Houston, and many other points over the country?

A. I think, to my best belief.

Mr. Scofield: I am willing to stipulate about that, your Honor.

The Court: Do you accept the stipulation?

Mr. L. E. Lyon: I will accept the stipulation, the stipulation being, unless stated, that the Gulf Company has field offices over the oil fields of the United States.

Mr. Scofield: No. I will stipulate with regard to [1889] that, that we had already taken Mr. Houghton's deposition and in that deposition there was discussion with regard to this notice that had been sent out, this notice that had been put on the boxes of B & W; and there was controversy in the Gulfs about this matter, so that the Gulfs were already advised.

Mr. L. E. Lyon: That is no stipulation with respect to the Gulf field offices. I asked the stipulation with respect to the Gulf field offices and I thought that is what you were willing to stipulate to: That the Gulf had field offices over the United States in the various oil fields of the United States.

Q. Is that true, Mr. Hall?

A. That is true. I would say way over the United States.

(Testimony of Jesse E. Hall, Sr.)

Mr. L. E. Lyon: As far as the other statement of Mr. Scofield, the deposition of Mr. Houghton speaks for itself in that regard and it is in evidence.

I would like to ask if you will stipulate, Mr. Scofield, that you have notified the Gulf and other oil companies and sent them copies of claims 23, 24, and 31 of the Hall application Serial No. 55,619, Exhibit 69 in evidence.

Mr. Scofield: No, I have no recollection that that was done. If you can give me some letters or any clue as to where it was sent? I don't recall that being sent anywhere. I know that Gulf had knowledge of it, because they followed [1890] this thing very close, and I think during the testimony taken of Mr. Houghton, that he had knowledge of these claims. Whether or not any other companies did, I don't know.

Mr. L. E. Lyon: How did Mr. Houghton obtain knowledge of such claims unless they were given to him by you?

Mr. Scofield: He had this interference when it was pending in the Patent Office, I know. He had papers on that because you sent some of them to him.

Mr. L. E. Lyon: I did not send him any such claims. Did you provide Mr. Houghton with access to the application files of Mr. Hall?

Mr. Scofield: Well, I think that the application files will show, themselves. I believe the 627' indicates in it that he had access to that file. But I don't know about the others.

(Testimony of Jesse E. Hall, Sr.)

Q. (By Mr. L. E. Lyon): Mr. Hall, can you explain the possession by Mr. Houghton of a copy of claims 23, 24, and 31? A. How is that?

Q. Can you explain that Mr. Houghton of the Gulf Company had in his possession copies of the purportedly allowed claims 23, 24, and 31 of your application Serial No. 55,619?

A. I was informed by the Gulf that you were Mr. Houghton's associate and each one had access to each other's papers all the way along. I have been informed of that all [1891] the way through.

Q. I never gave Mr. Houghton any such papers at any time. Did you give him copies of the claims?

A. I never even spoke to Mr. Houghton but once in my life.

Q. Did you give them to Mr. Vollmer of the Gulf Research & Development Company?

A. I certainly did not. Mr. Houghton, the time that I called on him, stated that you had just been down there and he was well informed of the matter. I believe you had been in there the day before.

Q. Do you know of any other oil company or purchaser of scratchers who was supplied with copies of claims 23, 24, and 31 of the Hall application Serial No. 55,619, Exhibit 69?

A. Mr. Quigles told me that he was informed by the patent matters of the controversy between B & W and myself.

Q. And when was that?

A. Along a short time prior until we taken the deposition. And I also went to Houston to see his

(Testimony of Jesse E. Hall, Sr.)

attorney that he informed me of, and the attorney informed me that your office, Mr.——

Q. What date was that?

Mr. Scofield: Let him finish his answer.

A. That your office—Mr. Caughey will so state —informed him. And I asked him for the information and he [1892] said he wouldn't give the information, because he considered hisself attorney for B & W and also attorney for the Union Producing.

I says: "Then we will subpoena the records on that." I think we did from then on out. So the Union Producing attorney was your associate and considered so.

And that was the same happening to the Standard Oil, I understand, too, that your advices went all the way along through those companies and your information.

Q. When you are speaking of me, of course, you know that I was not even connected with the case in any way at that time; isn't that true?

A. I don't know. Your name has been pretty big in it all the way along. Every time there is a fight happened out you have been pretty close to it

The Court: Let us proceed, gentlemen.

Q. (By Mr. L. E. Lyon): When was this so-called subpoenaing the records of the Union Producing Company?

A. The date of the records of the subpoena, they are in the record here. I don't recall.

Q. Isn't it a fact that the Union Producing Company refused to produce those; that the matter was

(Testimony of Jesse E. Hall, Sr.)

taken to the court in Louisiana and the court declined to make them produce any records?

A. I understand the court gives the privilege to make [1893] them produce the records, under your protest.

Mr. L. E. Lyon: Will you stipulate that the contrary is true, Mr. Scofield; that the court declined to make Union Producing produce its records?

Mr. Scofield: I think the outcome of that squabble was that we sent Union Producing——

Mr. L. E. Lyon: Well, just answer the question.

Mr. Scofield: Well, I will give the information because it is not just a no or yes on that. We sent a list to Mr. Reeder of the Union Producing and he checked it with that and sent back the list; and I think it was marked here. I don't know whether it has been admitted yet.

The Court: Do you offer to so stipulate?

Mr. Scofield: I offer so to stipulate.

Mr. L. E. Lyon: Will you stipulate that Judge Porterie in Louisiana sustained the objection of the attorneys of Union Producing Company to producing the records on your subpoena?

Mr. Scofield: No. I think that Judge Porterie did not so hold; that he actually held that we could supply them with this list and let them check the list, and then in return obtain this list of what was actually purchased by Union Producing.

The Court: I am understanding that you do not arrive at any stipulation, with all of the [1894] colloquy.

(Testimony of Jesse E. Hall, Sr.)

Mr. L. E. Lyon: No, your Honor, no stipulation.

The Court: Proceed.

Mr. L. E. Lyon: There was no stipulation arrived at in that regard and we will rely upon the records which are in evidence.

Q. Mr. Hall, you state that you are at the present time drilling some wells, I believe, in North Texas, is that correct?

A. No, I don't think I stated I was drilling any wells in North Texas.

Q. Well, where is it? Where are you drilling some wells?

A. I am drilling some wells in Texas.

Q. In Texas, but not North Texas?

A. Not North Texas, no.

Q. All right. Pardon me for putting the "north" in. Have you set casing in any of those wells?

A. I have.

Q. What do you do when you set casing?

The Court: With respect to what?

Mr. Scofield: Yes.

Mr. L. E. Lyon: What did he do in these wells when he set casing, your Honor?

The Court: With respect to what?

Mr. L. E. Lyon: With respect to the wells.

The Court: How did he set it, what tools did he use, [1895] or what do you wish to know?

Mr. L. E. Lyon: What operations did he perform in setting the casing. Do you understand the question?

The Court: If you will direct his attention to

(Testimony of Jesse E. Hall, Sr.)

something in particular, I will allow it; otherwise I will make my own objection to that question.

Q. (By Mr. L. E. Lyon): Do the words "set casing" have an understanding in the oil industry?

A. It certainly does.

The Court: I take it, technically, that it does, but we are not going to set the casing here. If you are after something: What tools did he use; what method did he employ, specifically, in certain respects, you may ask it. Otherwise I will disallow it.

Q. (By Mr. L. E. Lyon): Does "set casing" in Texas mean cementing the casing?

A. Not necessarily.

Q. Did you cement the casing when you set it?

A. I cemented the casing during the operation, yes. But there is lots of casing set without being cemented.

Q. When someone says to you, or when you hear that in a well operation the casing has been set, don't you construe right away that the casing has been cemented?

A. I first would probably inquire as to what steps of the well the casing was put in. I would probably then [1896] conclude it was either cemented or did not set. You see, we run lots of production strings of pipe that we set. It is all casing. Lots of strings of casing is run in there and left. All cable tool wells in Texas, they don't never cement them until they get through.

Q. All right. Then the term "set casing" means the setting of the casing by cementing it or by what other processes?

(Testimony of Jesse E. Hall, Sr.)

Mr. Scofield: Objected to as indefinite, no foundation as to what he is attempting to get at. I don't understand it.

The Court: Sustained. [1897]

* * *

Mr. L. E. Lyon: "Set casing" means, usually, that the casing is cemented in place. I said if it is set by other means, the other proposition will accompany the "set casing."

The Witness: I think "run casing" is used more than any other wording, that the casing is run in such and such a well.

The Court: Well, may it be stipulated that where casing [1899] is cemented, that the cementing process is a part of the setting process?

The Witness: Yes, sir.

Mr. Scofield: I will stipulate to that.

The Court: Will you accept that stipulation?

Mr. L. E. Lyon: I will accept that stipulation as far as it goes, your Honor.

And I would like to have this paper marked.

The Court: Are you offering it for the purpose of showing the use of the term in this community? Is that a trade paper?

Mr. L. E. Lyon: That is a financial section of the Los Angeles Evening Herald and Express and it carries a daily report on the oil developments over the country.

The Court: Is there objection to the offer?

Mr. Scofield: No objection.

The Court: It is received in evidence.

(Testimony of Jesse E. Hall, Sr.)

The Clerk: Defendants' Exhibit DF. [1900]

* * *

Redirect Examination

By Mr. Scofield: [1901]

* * *

Q. (By Mr. Scofield): To your knowledge, Mr. Hall, when did Wright or when did B & W first offer a sidewise-bristle scratcher?

* * *

A. The first time that I knew that they offered a sidewise bristle was the offering of a Multiflex on the market and that was around the fall of 1948 or the first of 1949. It was back in that period of time.

Q. (By Mr. Scofield): During the years 1944 to 1950, when three claims that have been allowed by the Board of Appeals were copied [1907] by Mr. Wright and put into interference, had Mr. Wright on any occasion prior to the copying of those claims ever, to your knowledge, claimed that the non-radial or sidewise bristle scratcher was an invention of his?

* * *

A. The first knowledge that I ever had that they made claim to the sidewise bristle was when they made the claims for the interference in 1950. [1908]

* * *

Mr. L. E. Lyon: The Exhibit 104 was offered thereafter, beginning with the three wells of the

(Testimony of Jesse E. Hall, Sr.)

Union Oil Company, in March and April of 1940, and continuing until the present day.

The Court: Will it be so stipulated, that Exhibit 104 was offered as early as March of 1940 and continuously thereafter up to the present time?

Mr. Scofield: That I will stipulate to.

The Court: Do you accept that stipulation?

Mr. L. E. Lyon: I will accept the stipulation in that regard, your Honor.

I will further stipulate that the Multiflex scratcher exemplified by Exhibit 57 in evidence was offered to the trade and sold first in the fall of 1947 and continuously thereafter to date.

The Court: So stipulated, Mr. Scofield?

Mr. Scofield: Yes, I will stipulate to that. [1915]

Mr. L. E. Lyon: I will stipulate that the Nu-Coil scratcher as exemplified by Exhibit 72 was first offered to the trade in the fall of 1949 and has been continuously offered and sold since then.

The Court: So stipulated, Mr. Scofield?

Mr. Scofield: Yes, sir, if they will stipulate it was offered in the fall. I know I bought one in December, so it was put on the market in the fall. I will so stipulate.

Mr. L. E. Lyon: In the fall of 1949.

Mr. Scofield: 1949.

Mr. L. E. Lyon: Yes. And those are the only forms of scratchers which have been offered for sale by B & W. [1916]

* * *

Q. (By Mr. Scofield): Why are scratchers

(Testimony of Jesse E. Hall, Sr.)

mounted on casing between lugs and not permanently to the casing?

A. That is a two-fold reason. This scratcher or the other wall-cleaning guide——

Q. Let me put before you the wall-cleaning guide.

The Court: Exhibit?

Mr. Scofield: Exhibit 104.

A. Exhibit 104 would be mounted on the casing between lugs, with the distance a little greater than they pick the pipe up or each time they put on an additional joint to release the slips. If they secured this to the pipe, in the teaching of their literature and our literature that you must run these in the hole about two inches, with the bristles two inches greater than the hole, so it will take care of [1917] a larger diameter, each time you would pick it up this would make a dog and stick the pipe and totally tear the scratcher up.

So the only way to get this scratcher to the bottom of the hole so it will travel through the well one time only is to put a distance between the lugs so that when the pipe is picked up to release the slips to let down another joint, that the scratcher would not be moved. It would always be in a downward position and the springs would be pushed back this way.

The Court: Would be pushed towards the top of the hole.

The Witness: Would be pushed towards the top of the hole. If it was up this way, they would be

(Testimony of Jesse E. Hall, Sr.)

pushed that way; and if it was this way, they would be pushed in that way.

Mr. Scofield: You had better indicate in your answer. The record will be very confused if you just say "this way" and "that way."

A. Turning it over, when I call it in an upward position is with the bow of the springs at the end turned upwards.

Q. You are holding the scratcher, Exhibit 104, in a position, horizontal position, so that the wires are upturned, are you not?

A. That is right. * * * [1918]

The Witness: I will finish very quickly. I will say that the lugs on the pipe, the distance between should be a [1920] little greater than the distance the driller uses to pick up the slips to get them out of the table and let the next joint down, so the scratcher does not have to go in reverse, and remove your hardship of this travel to the bottom of the hole.

Q. (By Mr. Scofield): What is the objection to the scratcher going in reverse every time a new section of pipe is put on?

* * *

A. The objection of this type of scratcher going into reverse with the springs upward, and if it is pulled in reverse the hole of the well is not going to expand and the scratcher is not built to take care of that, and damages the scratcher.

The Court: If you pull it backwards you open

(Testimony of Jesse E. Hall, Sr.)
the wires, don't you?

The Witness: That is right; you really bend them. [1921]

* * *

Q. (By Mr. Scofield): To your knowledge, Mr. Hall, is there any practice in the industry with regard to mounting tools on the outside of [1922] casing? A. There is.

Q. What is that?

A. The conditions that arise at the running the tools warrant a condition to mount the tools. The distance that would be required to have the lugs apart, to get the benefit out of it, would have to be a greater distance than the standard practice of the driller to pick up the pipe to pull the slips out before he starts down. Every joint of pipe that is added or taken off, the driller has to pick the pipe up to get the slips out, even though he is going down.

Q. And how great a distance is that?

* * *

A. The ordinary distance that has been accepted by installing scratchers is a simple figure, 12 [1923] inches.

* * *

Q. (By Mr. Scofield): You have before you on the desk one of the Weatherford scratchers, which is Exhibit 40 in evidence. Will you explain how those are mounted on the pipe?

* * *

A. The vertical reciprocation that I just explained is not necessary in this type of a scratcher.

(Testimony of Jesse E. Hall, Sr.)

The lugs are welded something like a half an inch, just so that the scratcher can be free to rotate. This scratcher rotates itself; the pipe don't rotate it. The pipe only pulls it. And when it goes in reverse it rotates itself around the pipe. In other words, it rotates by walking itself around the pipe.

As illustrated in a horizontal position going down in a well, all the bristles would be pointed back in that direction.

The Court: Towards the top of the hole?

The Witness: The same as the Multiflex, and all— [1924] it has a cycle. This bristle has a cycle it goes through.

Q. (By Mr. Scofield): And you are now pointing to one of those bristles upwardly?

A. That is correct. And allowing my finger to be the bore of the well, which is permanent and does not move, on there hard, and as the pipe is pulled up this spring will pass down a sweeping arc and go to that position.

Q. Now, you are moving the wire from——

A. And I am moving the collar to an upward position and the wire is now in a downward position, and the scratcher is made in an upward traveling position, and that movement can go on something like—we have reciprocated these scratchers something like 50,000 times in tests and not find them damaged, damage to them. So this scratcher rotates on the pipe. It is not rotatable on the pipe. This scratcher here is traveling on the pipe but it don't rotate. [1925]

* * *

(Testimony of Jesse E. Hall, Sr.)

The Witness: Which is Exhibit 40, this scratcher here.

The Court: Exhibit 40?

The Witness: Exhibit 40 walks around the pipe, due to the fact that when in an upward position, traveling, the scratcher tine is pointed downwardly and the well bore doesn't give, the end of the scratcher tine sticks to the well bore and as it is pulled down by it, instead of wadding the springs all up, it turns it around the pipe for release.

The Court: Pulling what around the pipe?

The Witness: Pulling of the band around the pipe.

The Court: Pulling the band of the scratcher?

The Witness: The band of the scratcher.

The Court: The collar, the collar of the band?

The Witness: That is correct, and it has to have a release of a spring at this orbit to make that cycle.

I might state that if this Exhibit FFFF was going in a downward position and the spring was pushed up there, if it made this orbit and I pushed it around, it would only bend and break off, it would never be able to make the travel of the reverse at all. It would only meet the same results as in here (indicating).

The Court: As Exhibit 104?

The Witness: That is 104.

The Court: In other words, what you are saying, as I understand it, there are only two possible directions for the [1926] tines to move on Exhibit

(Testimony of Jesse E. Hall, Sr.)

104 and on Exhibit FFFF, and that is up and down, is that it?

The Witness: In this Exhibit FFFF, the only direction for it to move after it starts in a hole——

The Court: Is up or down?

The Witness: Is down.

The Court: Well, it could be moved up, could it not?

The Witness: No. I have never figured how it could be reversed to get it in upward position, without throwing it through the failing part.

The Court: It might bend the tine backwards?

The Witness: Oh, that is true, you can bend them.

The Court: And your Exhibit 40?

The Witness: This has what we made. This has the reversing feature, that is, reverse all of these, pulling down to here (indicating), and they will all go back in that direction and this way (indicating), that is upward and downward movement. [1927]

* * *

DEPOSITION OF KENNETH R. EVANS

a witness produced on behalf of the Petitioner, having been first duly sworn to testify the truth, the whole truth and nothing but the truth, upon oral interrogatories, deposed and testified as follows:

Direct Examination

By Mr. Lyon:

Q.1: Will you state your full name?

A. Kenneth R. Evans.

(Deposition of Kenneth R. Evans.)

Q.2: Your residence? A. Bakersfield.

Q.3: What is your occupation?

A. Consulting Petroleum Engineer.

Q.4: Are you connected with any company?

A. No.

Q.5: What company were you connected with during the year 1940?

A. Union Oil Company of California between about 1933 until 1945.

Q.6: In 1940 in what division or district were you located of the Union Oil Company?

A. In the early part of 1940 I was in the Southern District, working out of Dominguez, working in the Dominguez-Rosecrans area. In the latter part of the year I was transferred to Santa Maria. [1810-3]

Q.7: In what capacity were you employed by the Union Oil Company while you were working in the Southern Division?

A. As an Assistant Petroleum Engineer, Assistant to the District Engineer.

Q.8: What were your duties?

A. Oh, supervising the coring, interpret electric logs, determine coring points and total depths of wells, cross-section work, and so forth, and supervising the running of casing and the cementing of oil strings or casing. Those were in general the prime activities.

Q.9: I hand you a photostatic copy of some records here identified as Petitioner's Exhibit O-1 to O-8, inclusive, and ask you if you can identify these papers?

(Deposition of Kenneth R. Evans.)

A. Yes, indeed. All the Casing Tally, and the final "Remarks" on the Casing or Drill Pipe Records are mine, in my handwriting, my signature, and the detail of the casing job on the tour report of that well was in my writing, and my signature.

Q.10: When, with reference to the date that these tour report records and these records bear did you place your signature on the report and do the writing thereon?

A. Just a few minutes after the casing was cemented, and the whole details were wound up before we left the rig, that was the common procedure, and we wrote a detailed [1810-4] report of the cementing operations and the description of the casing and its appliances at that time before we left the rig, right after the cement job.

Q.11: The reports bear a date, that date in this case being 3/1/40; what reference has that date to the time that these reports were made?

A. Well, exactly that day. The tour report is made as of that time, and the report is supposed to be written on the tour at which the operation took place.

Q.12: Now, you have identified these papers as being in your handwriting. Starting with Exhibit O-1, if I understood your testimony correct, that which was written on this particular document by you was the matter appearing under "Remarks," and bearing your signature, "K. R. Evans"; is that correct? A. That is right.

Q.13: There is another signature on there. Whose signature is that? A. That was the driller.

(Deposition of Kenneth R. Evans.)

Q.14: And he signed that at that time?

A. They signed every report. Whether he signed it at that time, I doubt it. Usually they sign it when they get on the rig or just before they left, and that tour wouldn't show at the same time, at the time I wrote my report. Those are my initials by the way. [1810-5]

Q.15: On Exhibit O-2 there is an initial——

A. K. E.

Q.16: ——K. E. That is your initial under "Petroleum Engineer"? A. That is right.

Q.17: And that is true also of Exhibit O-3?

A. Yes.

Q.18: The "K. E." is your initial as Petroleum Engineer?

A. That is right. May I explain the reason for that signature on those two?

Q.19: Just a minute, I want to get the facts first, and then I will let you do it. A. All right.

Q.20: On Exhibit O-4 is a casing tally, I believe 186, and under that are some initials. Are those your initials? A. "K. R. E.," yes.

Q.21: There is some printing under "Remarks" on that same exhibit. Is that your printing?

A. Yes, everything on that page is my handwriting, my printing.

Q.22: Including date?

A. Including date, the heading, and the works.

Q.23: Is that also true of Exhibit O-5? [1811-6]

A. Yes.

(Deposition of Kenneth R. Evans.)

Q.24: And also true of Exhibit O-6?

A. Well, it seems to me that—I don't recognize those as my handwriting. They might well be, although—yes, it must have been. I must have been writing a little bit differently at that time. Sometimes we had split engineers if they were long casing jobs, but I apparently started that one, from start to finish.

Q.25: How about Exhibit O-7?

A. Yes, my handwriting and my signature.

Q.26: Now, on Exhibit O-7 and also on Exhibit O-1 there is a notation "B & W scrapers 26 feet and 32 feet up and Baker float collar." Will you explain that entry, the whole entry?

A. Yes, that is a description, in other words, the seven-inch casing included a Baker down-whirler float shoe on bottom. I notice I didn't put "float shoe" but "down-whirler shoe on bottom, Hall spiral guide eight feet up" from bottom, B & W scrapers 26 feet from bottom and 32 feet from bottom, respectively, and a Baker float collar 45 feet from bottom. That is what, it pegs it in the string from bottom up, each of those appliances.

Q.27: Looking at the Casing Tally Sheet, which is Exhibit O-4, where, with reference to the casing as enumerated in these tally sheets, would those B & W scrapers [1810-7] have been located.

A. Well, this 44.62, which is—in essence is the 45 feet spoken of in the previous report and——

Q.28: That is the No. 1 joint?

A. The first joint, and I make a notation here

(Deposition of Kenneth R. Evans.)

again that the shoe joint, which is the first joint, includes a Hall spiral guide eight feet up and B & W scrapers 26 feet and 32 feet up on that one joint.

Q.29: Can you tell me what these B & W scrapers were that you refer to there?

A. Well, they were wall cleaners or scratchers or scrapers. We used to call them all sorts of names at that time, but in essence they were wire contrivances which we slipped over the end of the pipe and positioned with welded lugs to hold them in place, or within a foot or two of place on a joint.

Q.30: In that last answer you referred to a scratcher, pointed to this scratcher, Exhibit 2, on the table in front of you. Does that correctly illustrate these B & W scratchers?

A. I think so. They had various lengths extending out of the scratcher, and, of course, they varied in diameter or shape, depending upon the size casing they ran them, but that, in essence, is the scraper or scratcher that I spoke of. [1810-8]

Q.31: Now, you say that this scraper or scratcher was mounted on this bottom joint between lugs or stops so that it could move. How could it move?

A. Well, they were welded—lugs were welded, either just beads or short welding material or actual strips of metal were welded on to allow for the movement of this scraper, wall guide, cleaning guide or whatever you wish to say, for perhaps a foot or two feet, whatever we felt it would—was necessary to pick it up out of the slips, so that actually this would be primarily stationary and not be scratching or cleaning an interval up the hole of mud where we

(Deposition of Kenneth R. Evans.)

were not interested in having it cleaned off. We wanted to hold that mud cake secure.

Q.32: You state that it could be moved along the casing between these guides or lugs or stops. Were the scratchers secured in any other way to the casing?

A. Not that I recall. They were allowed, if we had to rotate the pipe, there again the same thing was true, unless we wanted a cleaning job to be done we wanted it so that this thing was free to move, and so it could rotate on the pipe. It was essentially free between the lugs, but it just didn't get away.

Q.33: Then from this record, Exhibit O and its respective parts, to summarize your testimony, is that two guides like Exhibit 2 were placed on the bottom [1810-9] joint 26 and 32 feet up from the bottom? A. Right.

Q.34: That casing was lowered in the well, was it? A. That is right.

Q.35: And a cementing operation was performed?

A. That's right, just according to that description.

Q.36: Can you tell me from your recollection or from this record, Exhibit O and its parts, whether or not that casing was reciprocated during the time the cement was being pumped into the well?

A. I know definitely that it was, because when I was on the job that was something that I made sure was done. That was one of the reasons that I was on the job.

Q.37: Can you tell from this record or from your

(Deposition of Kenneth R. Evans.)

recollection of the well whether a successful cementing job was performed?

A. Now, if you mean a successful cementing job with regard to a shut-off, perhaps by going further on I might be able to, because—no, we didn't get to that point in these records. As far as getting the cement in place and getting the cementing job completed and complete displacement and bumping the plugs, in other words, insofar as the cement job at the time of the job itself, it was a satisfactory, complete job. Whether there was a water shut-off I don't know. [1010-10]

Q.38: I hand you another set of records, identified here as Petitioner's Exhibit P-1 to 8. Pardon me just a minute. In Exhibit O-1 what well was that with reference to?

A. It was Rosecrans No. 8 in the Rosecrans Field, Union Oil Company well.

Q.39: I hand you a second set of records identified here as Petitioner's Exhibits P-1 to P-7, inclusive, and ask you if you can formally identify those records?

A. P-1 had nothing to do with my work. This was what looks to be a morning report that was taken over the phone at the Division office, phoned in every day on the basis of the information that was on the tour report, so I had nothing to do with that other than put down the basic data. On P-2 my handwriting, P-3 my handwriting, heading and everything, P-4 the same thing, P-5 was my detail and writing completely. That is Rosecrans No. 39.

(Deposition of Kenneth R. Evans.)

Q.40: I notice on P-5 there is a notation "Casing on bottom." Is that in your handwriting?

A. Yes.

Q.41: What does that indicate?

A. That indicates the time we reached the objective or the depth at which we wanted to place our casing and cement it.

Q.42: When was that?

A. That was on the 15th of March, 1940, at 2:45 p.m. [1810-11]

Q.43: All right, proceed with the next page. Is that in your handwriting?

A. The description under "Remarks" of the casing detail and the cementing job is in my handwriting, my signature; the signature of the tool pusher or drilling foreman, and the initials or the signature of the driller on tour at that time. I have nothing on that.

Q.44: You have nothing on P-7?

A. Nothing on P-7. That is not in my handwriting.

Q.45: What well is this?

A. It looks to be the same as this.

Q.46: I mean that one.

A. Union Oil Company Rosecrans 39, Rosecrans Field.

Q.47: For what day are these reports?

A. March 15, 1940.

Q.48: Is that entry made on that day?

A. Yes, indeed.

Q.49: By you? A. Yes, indeed.

(Deposition of Kenneth R. Evans.)

Q.50: In Exhibit P-2, which you have in front of you, there is at the bottom of the page a notation, "Shoe joint-spiral guide eight feet up—scratchers 26 feet and 32 feet up," and in a circle "187 joints." Is that all in your handwriting?

A. Yes, indeed. [1810-12]

Q.51: What do the figures "26 and 32 feet up" mean?

A. Well, that means just exactly as it did in the other exhibit. The scratchers were placed on the casing 26 feet and 32 feet up from the bottom of the shoe, on the No. 1 joint.

Q.52: That No. 1 joint with the scratchers on it was lowered into the well when, can you tell from this Exhibit P-2?

A. It was the first one lowered in at 7:00 a.m. on the 15th of March, 1940.

Q.53: Were those scratchers similar to the ones used in the other well, or were they different?

A. I would say they were similar. It just says "scratchers" there. Normally we identified them a little bit closer than that. Yes, I call them "B & W scrapers" on the P-6, but, as I say, at that time we used to call them by a variety of names when we were writing them.

Q.54: How did they compare with the ones used in the other well?

A. They were the same tools, the same appliances.

Q.55: They were precisely similar to Exhibit 2, then? A. Yes.

Q.56: In front of you? A. Yes.

(Deposition of Kenneth R. Evans.)

Q.57: I believe with respect to the [1810-13] previous report you used the expresion "running plug." What does that mean?

A. When the hole was drilled below the depth at which you wanted to cement your casing, it was customary to lower the casing perhaps 20 feet, sometimes 15 feet—in this case I see it was 20 feet—below the point at which you wanted to finally cement the casing until the casing or until the cement had started out through the bottom of the casing or through the shoe joint, and then it was at some time after that was started out that casing had to be down at the lowest point, in order that the cement was puddled or laid in, until the final job, when you pulled the pipe up the 20 feet, and there it was parked.

Q.58: That meant that you put a 20-foot plug in the bottom of the well?

A. That's right, at the same time that we were cementing.

Q.59: That might not be on bottom, but it was 20 feet below the desired depth of the casing?

A. That's right, sometimes ten, sometimes fifteen, but that was the reason.

Q.60: In this case was the casing reciprocated during cementing? A. Yes.

Q.61: About how rapidly was the casing moved in these [1810-14] cementing operations?

A. Not very rapidly. I would say we would normally move it, in a running bridge, where we were laying in a running bridge, we would move it, posi-

(Deposition of Kenneth R. Evans.)

tion the running bridge interval as noted, plus another ten or fifteen feet above possibly, move the shoe joint, and in terms of time just a slow movement up and down, without creating any seizure, but just enough to let the scraper or scratcher or cleaners actually do that job, actually clean or scratch.

Q.62: How were the scratchers mounted on this first joint in this second well, Well No. 39, how were they mounted on the casing as compared with the mounting on the previous well that you have spoken of?

A. Well, I would say they were mounted in the same way. We had, Union Oil Company had pretty much of a pattern, and they were lined out after a consultation with the B & W men.

Q.63: Do you recall whether the Union Oil Company at that time had a shop adjacent this particular field?

A. Not adjacent. The shop was in Santa Fe Springs, which was our Division shop.

Q.64: Do you recall whether it was the practice of Union Oil Company at that time to mount these devices like these scratchers or scrapers on the casing at the shop or at the well? [1810-15]

A. When we had what we called a standard setup, and we knew exactly, or at least were presumthat we knew exactly where we wanted to set the pipe and weren't going to run into anything different, they used to send out the shoe joints pretty well all made up, with the shoe on and welded, and everything all set to go. Other times they would send

(Deposition of Kenneth R. Evans.)

material out and we would have to put them on at the well, and get a welder out at the well.

Q.65: Do these well reports show a fairly uniform practice with reference to the mounting of the B & W scratchers?

A. These two certainly do. They look to me as though they must have been relatively standard. They were both in the same place.

Q.66: Does this indicate to you whether this bottom joint was made up at Santa Fe Springs in the shop or at the well?

A. Inasmuch as they were both identical—my memory does not serve me well enough to say positively that they were made up at the well or in the shop, but they are both the same, and from that I would say that they were possibly made up in the shop and sent over there. These were field development wells.

Q.67: And, as I understand it, the scratchers in both cases were mounted on the casing in the same way? A. Yes. [1810-16]

Q.68: Referring back just a minute to this O-1 report, I want to ask you one question that I failed to ask you. From Exhibit O-1 can you tell me the day and the time when the first joint carrying the B & W scratchers was lowered into the well?

A. March 1, 1940, at 8:20 a.m.

Mr. Lyon: You may cross-examine.

(Deposition of Kenneth R. Evans.)

Cross-Examination

By Mr. Scofield:

XQ.1: Mr. Evans, I don't believe you gave your age? A. 40.

XQ.2: What is your education?

A. I attended Stanford University, but did not graduate, and attended night school at USC during the time that I was a trainee engineer for the Union Oil Company.

XQ.3: You were in Engineering Departments in these schools?

A. That's right, Petroleum Engineering at Stanford.

XQ.4: I understand that you are now a consultant in Bakersfield? A. That's right.

XQ.5: Do you remember this man sitting next to me on the right?

A. I have never met the gentleman, no.

XQ.6: You know Mr. Clyde Hall in Bakersfield?

A. Yes.

XQ.7: From these records that have been put before [1810-17] you do you have any difficulty in remembering the type of well that was drilled and conditioned in each case?

A. Not particularly. What actually are you—do you mean by that, the type of well? These are obviously O'Dea zone or seven zone wells in Rosecrans, and what actually do you mean?

XQ.8: Were these directional wells?

A. No, not to my knowledge. I can't actually tell

(Deposition of Kenneth R. Evans.)

from this material whether they were directional wells or not. That was a long time ago.

XQ.9: From these reports of the company which you say you had a principal part in making up, would you have any difficulty at all in drawing me a diagram of each one of these wells?

A. What portion of the well, sir?

XQ.10: I would be interested in just having you give me a cross section of the hole and the well, how the scratchers were positioned, and how the cement was put in.

A. I wouldn't have any difficulty doing that, I don't think.

XQ.11: Let me give you a piece of paper here. Have you got a straight edge?

A. No. I think we won't draw it that close.

XQ.12: I just thought maybe it would be easier. I have a straight edge here, if you want one. Maybe it would [1810-18] be better to put one on each separate sheet. I will give you a good straight edge you can use.

Mr. Lyon: You are going to have a pretty hard time drawing 7,000 feet of eleven-inch pipe.

Mr. Scofield: Engineers have ways of doing those things.

The Witness: Unfortunately the size of the hole isn't down here. I might be able to get that from the first sheet. However, I didn't make this one. This is Rosecrans 39. Unfortunately, that does not give the size of the hole, but I will presume then we drilled essentially the same size hole, drilled and

(Deposition of Kenneth R. Evans.)

cored the same size hole. I honestly can't remember that, because it isn't down here. We will call that the hole, and I presume it was ten and five-eighths or eleven-inch, or something like that, and with a total depth of 7950, and then at 7525——

XQ.13: (By Mr. Scofield): You might put above there "Rosecrans 38" to identify it.

A. This is Rosecrans 39, the one I am working on, yes.

XQ.14: It is 39? A. Yes.

XQ.15: All right.

A. And then we lowered the casing into the hole —you are putting me to a lot of work, sir.

XQ.16: I am sorry. [1810-19]

A. What did I say, "Baker down-whirler float shoe"?

XQ.17: For your information, this is all going to the Patent Office, and they don't know too much about well drilling, and I think they will understand a diagram better than the reports.

A. All right, sir, "Baker down-whirler shoe on bottom."

XQ.18: All right.

A. Then I said there was a——

XQ.19: If you make a good diagram it will be good advertising for your consultant work.

A. I am afraid that is a tough deal, because my diagramming is very poor.

Mr. Lyon: There is no attempt made to make this sketch to scale?

The Witness: Heavens, no. Maybe I had better do that, "Not to Scale."

(Deposition of Kenneth R. Evans.)

Mr. Lyon: Everybody is giving me a word to that effect.

The Witness: I know it is not to scale. How is that for artistry, not to scale?

XQ.20: (By Mr. Scofield): Won't you identify it by the number, just the exhibit number? That is 39 you have got there, is it not?

A. No. P-1 to P-7, is that right?

XQ.21: P-1 to P-7, that is right. [1810-20]

A. Gee, I am going to sign that one. That is a beauty. Do I have to do both of them?

XQ.22: Yes, but I want to ask you a question or two about this before you do.

You have indicated the hole depth as 7,950?

A. Yes.

XQ.23: And you have indicated the running in of a plug at the bottom—— A. Yes.

XQ.24: —— at 7,545 feet? A. Yes.

XQ.25: You have shown the shoe on the bottom of the casing? A. Yes, there is the shoe.

XQ.26: And you have indicated it, "Baker D. W. shoe"? A. Down-whirler shoe.

XQ.27: Down-whirler shoe? A. Yes.

XQ.28: And above that you have indicated a couple of bows out from the casing?

A. I had to get them bowed out, but that is in essence the spiral guide, which was to hold the casing out away from the wall of the hole.

Mr. Lyon: That is the——

The Witness: The Hall spiral guide. That is what we [1810-21] were attempting to do.

(Deposition of Kenneth R. Evans.)

XQ.29: (By Mr. Scofield): You have indicated above that the two—— A. Scratchers.

XQ.30: —— two scratchers? A. Yes, sir.

XQ.31: And those scratchers you have said were similar in character to the scratcher which you have before you on the table, which has been identified here as Applicant's Exhibit No. 2?

A. That is right.

XQ.32: What was the reciprocation of the casing when you put in the plug?

A. Well, of course, we had to get down to this point in order to get our cement down there.

XQ.33: Put what that depth was on the record, you just pointed to it.

A. We had to drop the casing down to 7545 in order to lay in our running plug, and then we raised it—normally we raised it perhaps ten or fifteen feet above the point at which we finally wanted to cement the casing, in order that these scratchers would clean, and we felt that the—I forgot one thing. I don't know, let me see, sometimes we ran a basket.

Mr. Lyon: No basket. [1810-22]

The Witness: No, that one we didn't. We were using these contrivances, No. 1, to hold the casing out from the walls of the hole and, No. 2, to try and scrape the mud cake from the wall so that the cement would bond to the wall, and, as a consequence, in order to make use of them, they weren't doing any good just parked stationary, we had to reciprocate the casing in order to get a mechanical action. So that we would move the casing, in this case, and this

(Deposition of Kenneth R. Evans.)

is purely recollection or opinion, from 7545 to possibly 7510, somewhere, 30 or 35, perhaps 40 feet.

XQ.34: (By Mr. Scofield): Does your report indicate how many reciprocations there were during the laying in of the plug?

A. No, indeed. We were more or less issued instructions that were, you might say, customary procedure in cement jobs. At that time the Union Oil Company had made, they felt, quite an investigation of what it took to make a good casing job, and we were instructed to move that casing. The amount that we would move it, the duration that we would move it was normally dependent upon the opinion of the ideas of the man that was on the job. My feeling was that we would move it up until perhaps, oh, the last 100 cubic feet of displacement.

XQ.35: While you were putting in the plug there at the bottom was the casing down to the 7545 level? [1810-23]

A. Yes. This is down to that 7545. Normally we didn't want to hold—we didn't want to hold the pipe too long below our casing cement point or too long above the casing cement point, so that after the cement—we could calculate from our displacement at which time or what point the cement would leave the shoe. That would mean we would have cement coming from out of this casing down here, out of the shoe. Some time after that point we would be sure to be down to 7545, and usually it was fairly soon afterwards, and then we would gradually puddle

(Deposition of Kenneth R. Evans.)

that in, pulling the casing up until we were possibly five or ten feet from the point at which we finally wanted to stop the casing or cement it, and then we would reciprocate that casing perhaps over a ten-foot interval, which was five feet above and five feet below the point, so that if we did get stuck we would have it where or pretty darn close to where we wanted it.

XQ.36: What did you mean by "puddling" in that last answer?

A. Well, just actually pumping the cement through here we would gradually, slowly reach the casing, and let the cement come out of the casing while it was down here, and gradually pick it up out of the lower portion of the hole, try to puddle it so that it left a fairly solid column.

XQ.37: You have indicated on the diagram the height [1810-24] of the cement column that was finally laid. Could you tell that?

A. No, I cannot, without knowing the size of the hole. I could do it very easily, at least I could calculate where it was supposed to be generally, but without knowing the size of the hole I could not tell you.

XQ.38: It gives you the amount of cement that was put in there?

A. Oh, yes, but it does not give me the volume that is to be filled for this given height.

XQ.39: When was the pipe reciprocation finally stopped during the cement job?

(Deposition of Kenneth R. Evans.)

A. Normally—we displaced with 1,601 cubic feet —may I take this as an example?

XQ.40: Yes.

A. We had 450 sacks of cement, which represents, well, 450 times—which represents somewhere around 570 to 600 cubic feet, so that when we had approximately 100 cubic feet left of our final displacement we would chain the casing down, in other words, they would chain the brake down and hold the casing right at the point we wanted to leave it.

XQ.41: You have indicated there in your diagram the Baker float shoe as a couple of horizontal lines, have you not?

A. No, this is the Baker float shoe right here, and [1810-25] I have put these couple of little lines showing it was a down-whirler.

XQ.42: But you have indicated the Baker float collar by a couple of horizontal lines? A. Yes.

XQ.43: Won't you put a little line from that——

A. I will put a "float" in there. I forgot that. You see, I am not a very good——

XQ.44: Would you make me a diagram like that——

Mr. Lyon: You might mark that with the word "float." I don't think the Patent Office will recognize that. Just mark the word "float."

XQ.45: (By Mr. Scofield): Just make a lead line from the "Baker float collar" to it. That will do that. A. O.K.

XQ.46: Make me a diagram, if you will, of your Rosecrans 38 in the same fashion.

A. O-1 to O-8?

(Deposition of Kenneth R. Evans.)

XQ.47: Have you completed your diagram?

A. I have done a masterful job.

Mr. John Hall: Did you sign that?

The Witness: You bet, that is the best one. He is liable to have me doing it on all those wells.

XQ.48: (By Mr. Scofield): You have indicated that this plug was laid in some distance below the bottom of the well? [1810-26]

A. Oh, no, here is the total depth of the well, 7,884. Some distance above the bottom. This is the producing zone, you see, that we eventually we would run a liner in.

XQ.49: The plug was laid in some distance above the bottom of the well?

A. Yes, above. You said "below."

XQ.50: I am sorry. In this diagram you have indicated that a plug was laid in below the shoe?

A. Yes. That is what it says right here, "Laid in running plug 7475 and 7455."

XQ.51: And up from the shoe you have indicated a Hall spiral guide?

A. Yes, right here, eight feet up.

XQ.52: And above the guide you have indicated two B & W scrapers? A. Yes.

XQ.53: And above the upper scraper you indicated a Baker float collar? A. Right.

XQ.54: And you have also indicated, have you not, that this Rosecrans 38 is found in the Exhibits O-1 to O-8, inclusive? A. Yes, sir.

XQ.55: Was this centralizer on bottom used to scrape [1810-27] the mud as well as the scratchers?

(Deposition of Kenneth R. Evans.)

A. Well, its primary use was to centralize it, centralize the casing in the hole. However, we felt that any mechanical contrivance that touched the wall of the hole would do a certain amount of scraping upon doing so.

XQ.56: In laying in this plug was it used to scrape the well wall?

A. Inasmuch as it was supposed to contact the wall or the face of the wall, any time you would move that pipe you would presume it would scrape it.

XQ.57: In either of these wells or both of them did you drill out your shoe to determine whether you had a plug below there?

A. I can't tell from these records, sir, and it has been so doggoned long ago I could not tell you whether we drilled out, and we had two ways of testing our shut-off. One was to drill out five feet below the shoe, in other words, when we laid in a 20-foot running bridge we would drill out five feet of it, assuming that the last 15 feet was going to stop any of the lower production zone from entering the casing, and after drilling out the five feet of that plug we would test for a water shut-off by either bailing or running a formation test, a casing tester.

XQ.58: That was your practice?

A. Yes, or we would shoot four holes, gun perforate [1810-28] four holes perhaps, oh, sometimes five feet, sometimes 20 feet, depending on the thickness of the shale body above the shoe of the casing, without drilling this out, without drilling out the shoe even, and then test through the four holes. I

(Deposition of Kenneth R. Evans.)

honestly can't remember what we did in these two instances.

XQ.59: Do you know when you started first to use the Hall centralizer in the fashion you have shown on these two wells?

A. I can't pin it down as to date. I do know that we had, as I say, a department that investigated muds, investigated cement problems and cementing problems, and I speak, when I say "we" I speak of the Union Oil Company with whom I was associated at that time, and the head of that department or the man actually doing the research was a man by the name of Phil Jones. He investigated at some time prior to this date and, as I recall, possibly a year or more prior to that. Now, that is just memory. He conducted some experiments at the surface trying to simulate well conditions, and he ran various contrivances, rotated the pipe, he scratched it, he did a little bit of everything, and cut open these bags to look at the results of his job. He tried them in all phases, and the results of his——

XQ.60: Now—— A. May I proceed?

XQ.61: Complete your answer.

A. The results of his investigation were suggestive [1810-29] of the fact that we had to mechanically scrape the mud from the wall of the hole in order to get a bond between the cement and the formation. After that time we set a standard practice of using them, and to my knowledge we have been using some form of that mechanical scraping or scratching or cleaning ever since.

(Deposition of Kenneth R. Evans.)

XQ.62: Now, won't you make us a diagram of this last well, this Callendar No. 76——

Mr. Lyon: He was not on the well.

XQ.63: (By Mr. Scofield): ——in the same fashion?

Mr. Scofield: He was not examined about that?

Mr. Lyon: He was not examined on that well.

Mr. Scofield: I would like to have the reporter mark the diagram which Mr. Evans has made of Rosecrans 38 as Applicant's Exhibit No. 9, and I will offer it in evidence, and I will ask that the diagram of Rosecrans 39, which the witness has just completed be marked as Applicant's Exhibit No. 10, and the same is offered in evidence.

(The sketches referred to were marked by the Notary Public as Applicant's Exhibits 9 and 10, respectively, and made a part of this deposition.)

XQ.64: (By Mr. Scofield): In your experience, Mr. Evans, did any of these wall cleaning guides ever stick on those lugs?

A. I really couldn't tell you, because [1810-30] we didn't pull them out. I don't know.

XQ.65: You could not tell whether they rotated, could you, then? A. No, they were in the hole.

XQ.66: When did you discover it was necessary to have this vertical play between these lugs to pick up the casing out of the slips? A. When?

XQ.67: Yes.

A. No, sir, I could not answer that. As far as I

(Deposition of Kenneth R. Evans.)

can remember, why, we started out doing that. I can't recall honestly——

XQ.68: Was that the primary purpose of this vertical play between the lugs?

A. Yes, that—at least that was my idea of the primary purpose.

XQ.69: Why did that give you an advantage, to have that vertical play?

A. As I explained before, the object of this, every joint of casing as you lower it into the hole has to be pulled out of the slips. That depends, it might be a foot, it might be two feet, depending on how careless the driller was, but, in other words, to set or add a joint you had to pull the casing up. This would start at the very top of the hole, and from the shoe of the surface pipe down to the point where we wanted our cement to reach or we [1810-31] actually wanted our cement to do a job, we didn't want to disturb the formation, we didn't want to scrape the mud or scratch that mud off the wall and, as a consequence, that was the reason we didn't want any action of scraping, or cleaning action out of those gadgets up the hole. We would do it where we wanted it, and then we would pull it up and down sufficient interval to overcome the spacing of the lugs and actually let them go to work.

XQ.70: For the Patent Office's information won't you briefly describe what the slips are?

A. The slips are the contrivances that hold the casing, support the casing from dropping into the hole during the time when it is not attached to the

(Deposition of Kenneth R. Evans.)

blocks and the elevators. Should I describe the blocks and elevators?

XQ.71: No, but I will ask you this: Are these slips located on the rotary table? A. Yes.

XQ.72: Out at the surface?

A. Oh, yes, yes. They are just to hold the pipe while they are picking up another stand or joint to set it and screw it up. These slips hold that pipe, the casing in place at the rotary table.

XQ.73: Their function is to support the casing in the hole while you are screwing on another section of pipe?

A. Supporting the casing, yes, at the derrick floor of the rotary table. [1810-32]

XQ.74: In order to lift the casing and not have the added friction of these scratchers or centralizers or what not, you had this vertical play between the lugs? A. That was the prime purpose.

XQ.75: I think I forgot just one question I would like to ask you. A. All right.

XQ.76: I am going to read to you a method, and I am going to ask you if you will indicate whether or not this method was practiced in either or both of these wells, and I will read it step by step, and if you will just indicate whether the particular step was practiced during the laying in of this cement in either of these wells, Rosecrans 38 and 39:

"A method of placing a well plug or the like in a well bore." Was that done? A. Oh, yes.

XQ.77: "Including mechanically abrading the wall of the well bore at the zone in which the plug

(Deposition of Kenneth R. Evans.)

was to be formed by operating an abrading means in said zone of the well whereby extraneous material on the walls of the well bore is dislodged therefrom."

A. Well, actually in the plug zone, you will see by the very mechanics of the thing that the scratchers were not below it. The Hall spiral guide was in contact with some portion of that plug, also the upper portion, and [1810-33] what scraping or cleaning job or dislodging job which was done by it was done in the plug zone, like——

XQ.78: Did you circulate a liquid into and out of the well bore to remove said dislodged material?

A. Oh, yes, we circulated the cement and the mud—and mud.

XQ.79: And then did you deliver a quantity of cement slurry to the zone at which the plug is to be formed in the well? A. Yes.

XQ.80: Then did you mechanically agitate the mass of cement thus delivered by the movement of abrading means?

A. That's right, insofar as we were able, yes.

XQ.81: And thereafter did you withdraw the abrading means from the mass of cement tissued material and then allow the cement to set?

A. Yes.

Mr. Scofield: I think that is all the cross-examination I have.

Redirect Examination

By Mr. Lyon:

RDQ.1: When did you withdraw the abrading means?

(Deposition of Kenneth R. Evans.)

A. When we pulled it up from the bottom of the running bridge to the actual point at which we cemented and finally landed the casing, we withdrew it out of that 20 feet of hole. When you speak of "abrading means," I [1810-34] pointed out that the actual cleaners or scratchers or scrapers were never in contact with the running plug, the zone interval. However, as I say, whatever cleaning force the spiral guide did, it being eight feet above the shoe and having gone down 20 feet, the full 20 feet below, obviously the Hall spiral guide was into that running plug interval some 12 feet.

RDQ.2: Were the scratchers still in the cement?

A. The scratchers were always above the plug.

RDQ.3: Are they still in the cement now?

A. They are in the cement, but they are not in the cement plug.

RDQ.4: Is the Hall centralizer in the cement plug? A. No.

RDQ.5: Where is it?

A. It is up above the shoe of the casing. It is up in the cement around the casing, wasn't in the plug or what we describe here as the running plug.

RDQ.6: It is still 18 feet, according to these figures, below the lowest scratcher, is it not?

A. Eight from thirty-two.

RDQ.7: Eight from twenty-six.

A. Oh, the lowest? I am sorry. 18 feet, righto.

RDQ.8: And that is still in the hole?

A. Oh, yes, to my knowledge.

RDQ.9: And on the casing? [1810-35]

(Deposition of Kenneth R. Evans.)

A. To my knowledge.

RDQ.10: These were always round, that is, round on the exterior, weren't they? A. Yes.

RDQ.11: You have testified that Mr. Phil Jones was running a test for the Union Oil Company. Were you familiar with those tests?

A. Oh, Yes.

RDQ.12: Did you ever receive any instructions from the Union Oil Company as to the cementing of wells as a result of those tests?

A. Yes, generalized procedures. Each district was more or less, within limits, allowed to formulate their own ideas with regard to what it took to make a good shut-off or what it didn't, and we had all discussed the results of Phil Jones' work, and had copies of his report, and certainly it did, the report did go a long way to determine the methods and procedures used in cementing thereafter.

RDQ.13: Were you present at the API meeting at the Biltmore Hotel at the time Mr. Jones read his report? A. It seems to me I was.

RDQ.14: I hand you Petitioner's Exhibit L, and I will ask you if you will look at this and see if that is the report to which you refer?

A. Yes, I would say so, yes. [1810-36]

RDQ.15: In cross-examination you were asked some question with reference to added friction. Do you understand that there was any added friction which had anything to do with the matter of mounting these scratchers on the casing?

A. I don't recall the question with regard to

(Deposition of Kenneth R. Evans.)

added friction, but certainly any appliance you put out to contact the walls of the hole, unless you allow it play, is going to create added friction to the movement of that pipe.

RDQ.16: But did that have anything to do with the manner of mounting the lugs below and above the scratcher so as to permit it to move?

A. I would say it probably had a fair amount to do with it, although I don't recall mentioning it. I would say that is another very—one of the reasons that I forgot or didn't mention, yes.

RDQ.17: As an engineer and acquainted with these matters, will you state whether or not in your opinion the scratchers did rotate on the casing when the casing was reciprocated on the bottom joint during the cementing operation?

Mr. Scofield: I object to that as calling for a conclusion. The witness has already testified that they were in the wells, he didn't know whether they got stuck on the pipe or whether they rotated, or how they functioned in the well.

The Witness: Do I answer it?

RDQ.18: (By Mr. Lyon): Yes, go [1810-37] ahead.

A. We presumed that that is what—that is what would happen, they would be free to move, and that is all I can say. I presumed that they moved.

RDQ.19: And rotated?

A. And rotated. If the pipe was rotated, or if anything would make the pipe rotate, why, I would think that the——

(Deposition of Kenneth R. Evans.)

RDQ.20: How about it if the pipe was held still and the scratchers just moved up and down, would they rotate, would the scratchers rotate?

A. In the hole, if the pipe was held still?

RDQ.21: No, the pipe moved up and down, reciprocated?

A. Well, you always get a certain amount of torque developed in moving bodies up and down into the hole, and it is quite possible that they rotated. If you move them, any rotating action or any means to rotate, of the pipe to rotate, I mean the scratchers, I would presume they would rotate.

RDQ.22: The scratchers were free on the pipe to rotate, weren't they?

A. Well, I doubt, I don't think the scratcher necessarily would rotate under those circumstances, sir. I think that the pipe would rotate in the scratchers and the scratchers would be held.

RDQ.23: That is relative, at least?

A. Yes, I think there is a very good chance of that. [1810-38]

RDQ.24: These drawings that you made, Exhibits 9 and 10, are entirely schematic, are they not?

A. Yes, indeed.

RDQ.25: On each of those drawings you have written the word "Lugs," indicating the lugs by little spots which are above and below what appear to be scratcher wires; is that correct?

A. That is right, above. They would be above the body of that. I couldn't get the whole works in the drawing. In other words, they would be possibly a

(Deposition of Kenneth R. Evans.)

foot above and a foot below, or something of the sort, just to allow that whole body to slide on the pipe and stop it from going forward and stop it from going below. [1810-39]

* * *

DEPOSITION OF VICTOR L. AGUIRRE

a witness produced on behalf of the Petitioner, having been first duly sworn to testify the truth, the whole truth and nothing but the truth, upon oral interrogatories, deposed and testified as follows:

Direct Examination

By Mr. Lyon:

Q.1: Will you state your name?

A. Victor L. Aguirre.

Q.2: Where do you reside?

A. 1713 East Plymouth, Long Beach, California.

Q.3: What is your occupation?

A. Self-employed, an off-sale liquor store.

Q.4: What was your business in 1939, or what were you doing in 1939?

A. I was working in the oil fields.

Q.5: For whom? A. In 1939?

Q.6: Yes.

A. Part of the time I worked for St. Helens, and the rest of the time was odd jobs with different companies.

Q.7: Did you work at any time for Thomas Kelly & Sons? [1822-2] A. I did.

Q.8: During 1939?

(Deposition of Victor L. Aguirre.)

A. I can't vouch for the correct year on that, but I did work for them two tours.

Q.9: Two tours, was it?

A. Two tours means two shifts, in case you don't know what a tour is.

Q.10: At the end of the year?

A. I can't remember the part of the year, the part of the year or the year. I don't remember.

Q.11: Do you remember the well? A. I do.

Q.12: What was the well?

A. Well, the well was over, I guess you would call it part of the Dominguez Field on Main Street, oh, we will say west of Compton, the city limits of Compton, in that area in there.

Q.13: Mr. Aguirre, you don't remember the name of the well?

A. Well, no, it was Thomas Kelly, and Earl Sweetzer was the pusher. Earl Sweetzer was the superintendent, we call them pushers.

Q.14: Tool pushers? A. Yes.

Q.15: Do you remember any particular occurrence [1822-3] at that well during the time you were working on that shift, or on those two shifts?

A. Well, I don't quite understand the question; a "peculiar occurrence" in respect to what?

Q.16: What were you doing there? What was your occupation at that well?

A. I was an extra man on a casing job, running casing out on the walk.

Q.17: Was there anything put on that casing?

A. There were—well, you can call it a collar with

(Deposition of Victor L. Aguirre.)

wires sticking out, and the wires had a slight bend on the end upwards, If I remember correctly.

Q.18: How were those collars put on the casing?

A. Well, they were slid on, and they were loose, and there were welded spots below and above, and the distance I don't know. I don't remember that.

Q.19: Those welded spots above and below them were welded to what, to the casing?

A. Oh, to the casing.

Q.20: Were they welded to the collar that you talked about that had the wires on it?

A. No, to the casing.

Q.21: I see. You say that they were above and below that collar? A. Yes. [1822-4]

Q.22: Did that permit the collar to move between these spots?

A. It permitted them to move between, and the collar rotated on the pipe.

Q.23: How did you know the collar rotated on the pipe?

A. Well, there was an incident that happened. I don't know why they rotated it or what the purpose of it was for that, I don't know, but one joint of pipe we dropped off of a log or a block, if you want to call it that, and my job was snubbing the pipe in, and when we snubbed it in they made me stop because they were afraid that that particular collar was ruined, I guess, or bent or something, and they went and they tried it, some fellows there, I don't remember who.

Q.24: Some fellows there? Did you know the

(Deposition of Victor L. Aguirre.)

people that were there at the time? A. No.

Q.25: You say that on this one that you dropped somebody tried it. Tried it for what purpose, do you know? A. To see if it would revolve.

Q.26: To see if it would rotate on the casing?

A. Yes, that is, they tried it, and it turned, and they seemed to be satisfied, and we went in and run [1822-5] that particular joint in.

Q.27: I hand you a device and ask you if this compared in any way with what was put on the casing?

A. Well, it looks very similar to it, it looks very similar to it, yes, to my memory.

Q.28: Did the wires extend the same way?

A. Yes.

Q.29: Bent the same way?

A. It looks right to me, just like it did then, if I remember right, and I think I do.

Mr. Lyon: Let the record show that the witness was handed Petitioner's Exhibit A, and had that scratcher in his hand during the time he answered the last questions. [1822-6]

* * *

DEPOSITION OF ERNEST F. EDMONDS

a witness produced on behalf of the Petitioner, having been first duly sworn to testify the truth, the whole truth and nothing but the truth, upon oral interrogatories, deposed and testified as follows:

Direct Examination

By Mr. Lyon:

Q.1: Will you state your full name, Mr. Edmond? A. Ernest F. Edmonds.

Q.2: What is your occupation, Mr. Edmonds?

A. Oil driller.

Q.3: How long have you been an oil driller?

A. Well, drilling on and off, working in the oil fields on and off for thirty years.

Mr. Scofield: Just a little louder.

Q.4: (By Mr. Lyon): Were you ever employed by Thomas Kelly & Sons? A. Yes, I was.

Q. During what time?

A. I was employed with Kelly & Sons on and off for ten years, well, from, oh, I would say around 1924 up until way up in the '30's, and then early in 1940—I think I finished with Kelly in '40, 1940; anyhow, the year the War broke out.

Q.6: Did you ever do any drilling for Thomas Kelly [1822-27] & Sons in the Rosecrans Field?

A. Yes, I did.

Q.7: And any particular well or wells?

A. I was on all the wells they drilled there.

Q.8: Did you do any drilling on the Community No. 1 Well? A. Yes.

(Deposition of Ernest F. Edmonds.)

Q.9: Before you is a log book. Are you familiar with that log book? A. Yes, I am, yes.

Q.10: Did you make any of the entries in that log book?

A. Well, here is one of mine right here.

Q.11: You have referred to the 8:00 a.m. to 4:00 p.m. tour on what appears to be the date—what is that date?

A. This is the 1st—it looks like 11th.

Q.12: Look on the date preceding.

A. This is 12th and the 31st.

Q.13: Of what year?

A. This one here is '39.

Q.14: Do you recall working on that well during the latter part of 1939? A. Yes, I do.

Q.15: Where was that well located?

A. Well, I think that is Compton Boulevard that [1822-28] comes through there. Well, I call it Compton and Main, in that block.

Q.16: Do you recall the setting of the final casing in that well?

A. Yes, I well do, because the mud was God darned heavy. We could hardly get the casing in.

Mr. Scofield: Read the answer.

The Witness: What is that?

Mr. Scofield: I just wanted the answer read.

The Witness: I said the mud was so heavy we couldn't hardly get the casing in.

Q.17: (By Mr. Lyon): Was there any unusual device mounted on the casing, the last casing that was laid in that well? A. Yes.

Q.18: What was it?

(Deposition of Ernest F. Edmonds.)

A. Scratchers. At least—I didn't know them, the first ones I had seen.

Q.19: Do you remember how many scratchers were used in the well?

A. I do not remember exactly, the exact number, but there was a few put in each joint from the bottom up to four or five joints. I forget the exact number.

Q.20: Do you remember the size of the casing that the scratchers were used on?

A. Yes, it was—I am pretty sure it was seven-inch. [1822-29]

Q.21: Was it seven-inch or six and five-eighths? Is that referred to as seven-inch?

A. Well, seven-inch o.d.

Q.22: Do you remember where these scratchers were mounted on the casing, at what point in the length of the casing?

A. Well they were mounted above the collars and below the collar of the previous joint.

Q.23: I mean during the length, near the top or bottom, or some place in between?

A. Between the joint.

Q.24: Which joint, the top joint, bottom joint?

A. They were mounted on the bottom joints.

Q.25: Do you recall how deep the well was?

A. I am not positive, but I believe it was around 8200, I am not absolutely sure.

Mr. Scofield: What was his answer?

The Witness: Around 8200, I can't remember the depth of that well.

(Deposition of Ernest F. Edmonds.)

Q.26: (By Mr. Lyon): There are two scratchers before you here on the desk, Applicant's Exhibit 2 and Petitioner's Exhibit A, and there is another scratcher down at the other end of the table, which is Exhibit M. Do any of these scratchers resemble the scratchers that were mounted on the casing at this Kelly well?

A. Well, yes, they do. In fact, they all look alike [1822-30] to me, a scratcher.

Q.27: You can't pick one out from the other as being——

A. They are all scratchers to me, only that there is different. I don't see any difference in these others.

Q.28: You mean Exhibit M, the small one, is different—— A. Yes, sir.

Q.29: ——from the other two? A. Yes.

Q.30: Were you present when the scratchers were mounted on the pipe?

A. Yes, I was. They were being welded on when we were getting ready to run the casing.

Q.31: You said that they were being "welded on." What did you mean by that?

A. They were being spot welded, top and bottom, that is, so that they would move on the casing. They weren't welded solidly. As I let them in the hole one of them slipped, and I thought I had busted the whole—and I think Bruce, all standing there, and I kind of looked at him. I thought maybe I had busted his scratcher.

Q.32: You mean they slid on the casing?

(Deposition of Ernest F. Edmonds.)

A. Yes, sir.

Q.33: Is that right? [1822-31] A. Yes.

Q.34: These stops you talk about here, where were they welded with reference to the casing, I mean with reference to the scratcher?

A. They were above and below the scratcher, so that the scratcher moved in between.

Q.35: Now, the scratchers you saw were not welded to the casing in any way?

A. No, they were not, because they moved when they went down through the table.

Q.36: Could you rotate the scratchers upon the casing?

A. Well, naturally you could. If they were that free, you could rotate them. I didn't go over and rotate them.

Q.37: On march 18, 1952, in my office you gave an affidavit in question and answer form, responsive to questions which I asked you, didn't you?

A. Yes.

Q.38: Those questions and answers were taken down and transcribed while you remained in my office, weren't they? A. Yes.

Q.39: And you signed the affidavit——

A. Yes.

Q.40: Immediately after they were [1822-32] transcribed? A. Yes.

Q. You had previously in this matter given an earlier affidavit at the request of some person. Who was that? A. I don't recall his name now.

Q.42: Is he here in the room?

(Deposition of Ernest F. Edmonds.)

A. Yes, right over there.

Q.43: That is Oscar Gay sitting over there in the corner. Is that the man you mean? A. Yes.

Q.44: Where did you met Oscar Gay?

A. At my house.

Q.45: Had you ever met him before that?

A. No, I hadn't.

Q.46: Did Mr. Gay advise you when he called on you who he was and who he was working for?

A. No, he didn't.

Q.47: Did he make any statement to you that indicated to you that he was working for Bruce Barkis or Kenneth Wright?

A. No, he didn't make any statements. I only figured there was one scratcher. I don't know, I didn't think there was any others, and when he come, what he did, he wanted me to prove that there was scratchers put on this well drilled for Kelly. I told him I would be glad to, because I run the casing and I knew they were on, and [1822-33] he told me he just wanted to prove that the scratchers were put on the well, on the casing, and I told him "I know they were put on because I run the casing," and I told him "I feel no harm in my proving that," and that's all.

Q.48: He subsequently presented you with an affidavit to sign, or did he present an affidavit to you at the time he called at your home, or was it a later time?

A. No, he called at my home and then came back

(Deposition of Ernest F. Edmonds.)

at a later day, and we came downtown, went up to some office. I don't remember the building.

Q.49: Did you make any objection to that affidavit?

A. No, I didn't, only what I told him, "All you want to prove is the scratchers were on the casing?" And he said, "Yes, that's all," and I said, "That's good enough for me." And he showed me how they were welded on, and I said, "They weren't welded exactly like that, they were welded top and bottom, spotted top and bottom," and he says, "That don't make any difference anyhow," and I said, "It is O.K. with me." All he wanted to prove the scratcher was on the casing? He said, "Yes," and I said "That's good enough."

Q.50: Where did that conversation take place?

A. Well, it was—I don't know what building it was.

Q.51: In a downtown office building? 1822-34]

A. I just got out of the hospital, and I come downtown with him.

Q.52: Is there anyone here present who was present besides Mr. Gay at the time you were in the downtown office building?

A. No, there was no one I seen, just him and I and the stenographer, at least I guess she was.

Q.53: There was no one else present at that time? A. No.

Q.54: Were you paid anything by Mr. Gay or by anyone else with reference to this affidavit?

A. Yes, I was.

(Deposition of Ernest F. Edmonds.)

Q.55: This prior affidavit, I mean. What were you paid?

A. I was paid $100, and a check for $10.

Q.56: Where did you receive the check for $10?

A. It was mailed to me.

Q.57: Mailed from where, do you recall?

A. No, I don't.

Q.58: Whose check was it?

A. I don't remember that. I just signed it, and that's all. I needed the money.

Q.59: All right. Now, when were you paid the one hundred dollars?

A. Mr. Gay gave me that personally.

Q.60: Where? [1822-35] A. At his office.

Q.61: When?

A. A day or two after I signed the affidavit.

Q.62: In what form did he give you the one hundred dollars?

A. Just a one hundred dollar bill.

Q.63: Did he tell you what he was giving it to you for? A. Well, for my trouble, he said.

Q.64: Your trouble in signing this affidavit, you mean? A. Yes.

Q.65: What did he pay you the ten dollars for?

A. Well, that I don't know, just said for expenses.

Q.66: He paid you the ten dollars for expenses; is that correct? A. Yes.

Q.67: Were you put to any expense in this connection?

(Deposition of Ernest F. Edmonds.)

A. No, just driving down to Long Beach, and I was going down anyhow.

Q.68: Did he tell you where the one hundred dollars came from? A. No.

Q.69: Did he say that he would charge it to his [1822-36] expense account? A. No.

Q.70: Had you ever met Mr. Gay before that?

A. Not that I remember.

Q.71: You stated earlier that you had difficulty lowering this casing in the well. Do you recall the casing becoming stuck at any time?

A. Yes, it did stick, and we had to work it.

Q.72: Do you remember about what the depth was that it stuck? A. No, I don't.

Q.73: Do you remember about how many joints of casing had been lowered into the well at the time?

A. That is too hard to remember how many joints would be lowered and casing sticks ten years ago.

Q.74: Yes, I was wondering——

A. A good number of joints in, and we don't keep track of them like that. I would say the casing was better than half in, although we started having trouble awfully soon caused—on account of the mud, I know that.

Q.75: What did you do when the casing got stuck?

A. All we do is just work it up and down and free it up, and then circulate it.

Q.76: Did you bring in any particular apparatus

(Deposition of Ernest F. Edmonds.)

to increase the pressure of the mud that was being circulated to free the casing? [1822-37]

A. Well, we hooked a cement wagon on, that's all.

Q.77: Referring to this log, I note on the midnight to 8:00 a.m. tour of the driller's report on 12/31/39, Exhibit B, the remark "Running six and five-eighths casing, circulating by Perkins." Do you know whose entry that is?

A. Whose signature this is here?

Q.78: Whose entry this is on the driller's report? A. Which one are you referring to?

Q.79: The entry that I read there "Running six and five-eighths casing"——

A. "Running six and five-eighths casing"?

Q.80: ——"circulating by Perkins."

A. Yes.

Q.81: Do you know who made that entry in this driller's report? A. No, I don't.

Q.82: Were you present at that time?

A. I think I was doubled over.

Q.83: You think you doubled over onto that tour? A. Yes.

Q.84: So that you were present when they were circulating by Perkins?

A. I wanted to go home, by God, and then Sweetzer made me stay out there.

Q.85: So you were present at the time that they [1822-38] were circulating by Perkins?

A. Yes.

(Deposition of Ernest F. Edmonds.)

Q.86: And "circulating by Perkins" in the oil field means what?

A. Circulating? Well, it is pumping mud in the casing and bringing it up on the outside.

Q.87: "Perkins" refers to what, generally? Cementing, doesn't it?

A. Yes, cementing, yes.

Mr. Scofield: We will admit that "Perkins" means cementing, even if the witness does not know that.

The Witness: You can be circulating and yet not cementing.

Mr. Scofield: Is "Perkins" a cementer? He has a cementer wagon?

The Witness: Yes.

Q.88 (By Mr. Lyon): Mr. Edmonds, on the next tour on December 31st, that is, the 8:00 a.m. to 4:00 p.m. tour, there is a signature after "Driller." Whose signature is that?

A. That is mine. You mean right here?

Q.89: Yes. A. My signature.

Q.90: On the same daylight tour of December 30th there is also a signature of the driller. Whose signature is that? [1822-39]

A. That is my signature.

Q.91: Are the remarks on the driller's report of that tour in your handwriting? A. Yes.

Q.92: What do they read?

Mr. Scofield: What is the date?

Q.93 (By Mr. Lyon): December 30th.

(Deposition of Ernest F. Edmonds.)

A. They are kind of blurred. "Landing from 7400 to 7495," I think that is what it is.

Q.94: The next one under that?

A. "Circulating."

Q.95: Now, similarly on the daylight tour of December 31st there is an entry under "Remarks." Is that in your handwriting?

A. Where is that? Here?

Q.96: Right here.

A. Yes, that is my handwriting.

Q.97: What does that say?

A. "Running six and five-eighths"—or seven-eighths casing—"five-eighths casing."

Q.98: Was it during that daylight tour on the 31st that the pipe got stuck?

A. Yes, I believe it was.

Q.99: What is that?

A. I am positive that was; if that is the day we were running that is the date it stuck. It didn't stick [1822-40] long. We got it unstuck. If it stayed stuck we would be down there yet.

Q.100: And it was at that time that the scratchers were on the bottom joint of the casing?

A. Yes. [1822-41]

* * *

DEPOSITION OF JOSEPH JESSE GIOIA

a witness produced on behalf of the Petitioner, having been first duly sworn to testify the truth, the whole truth and nothing but the truth, upon oral interrogatories, deposed and testified as follows:

Direct Examination

By Mr. Lyon:

Q.1: Will you state your full name and residence, Mr. Gioia?

A. Joseph Jesse Gioia, 1512 North Rose, Compton.

Q.2: What is your occupation?

A. I am a bridge and dock builder.

Q.3: What was your occupation in the latter part of 1939? A. I was a roughneck.

Q.4: And by roughneck what do you mean?

A. I was working on an oil well, drilling well.

Q.5: Where?

A. Well, I call it the Rosecrans Field.

Q.6: For what company or for whom?

A. Kelly & Sons.

Q.7: What time during that year?

A. Well, I worked there on that particular well about two months.

Q.8: What well was that? [1822-88]

A. Well, I don't know what the name of it was.

Q.9: Where was it located?

A. Well, I think it is Compton that goes through there, and a block and a half west of Main Street.

(Deposition of Joseph Jesse Gioia.)

Q.10: That is in Los Angeles County?

A. I think so.

Q.11: Between here and Long Beach, is it not?

A. Yes, sir.

Q.12: Those two months you worked on that particular well, were they all in the year 1939?

A. Yes, sir.

Q.13: Do you recall anything particularly about that particular well, Mr. Gioia?

A. In what way do you mean?

Q.14: Well, was there anything peculiar about that well, or anything new that was used on that well?

A. Yes, sir, there was a back-scratcher that I never seen before.

Q.15: Where did you see that back-scratcher?

A. It was on the casing, laying on the walk.

Q.16: How was it on the casing? A. How?

Q.17: Yes.

A. Well, the casing was slipped in it, is that what you mean?

Q.18: The casing was what, slipped into [1822-89] it? A. Slipped up on the casing.

Q.19: Were you present when the casing was slipped into it, as you say?

A. I helped slip it on the casing.

Q.20: Was there anything installed to keep that back-scratcher on the casing?

A. No, it was perfectly free.

Q.21: It was perfectly free? A. Yes, sir.

(Deposition of Joseph Jesse Gioia.)

Q.22: Could it move the full length of the casing?

A. Well, I think it did, but I think they put some beads on there.

Q.23: They put some beads on the casing?

A. Yes, sir.

Q.24: What for?

A. So it would run up and down only so far.

Q.25: Was anyone present when these back-scratchers were slipped on the casing?

A. Mr. Wright and a welder.

Q.26: Mr. Wright? A. Yes, sir.

Q.27: You have pointed out Mr. Wright. That is Mr. K. A. Wright? A. Yes, sir.

Q.28: What was he doing there? [1822-90]

A. He was just showing them what they had to do.

Q.29: Was there anything else, any other physical attachment between these back-scratchers and the casing other than these you are talking about?

A. No, sir.

Q.30: What did Mr. Wright do when the scratchers were placed on the casing?

A. Well, I guess just like anyone else would do, spin it, and then he would tell them where to put these beads, so that it would go up so far and down so far.

Q.31: About how far did they go, move in going up so far and down so far?

A. Oh, I think about ten or twelve feet.

Q.32: By spin you mean the same as rotate?

A. It was free to turn around, yes.

(Deposition of Joseph Jesse Gioia.)

Q.33: Free to turn around? A. Yes.

Q.34: And that is on the casing?

A. On the casing.

Q.35: Were you present when the casing was run in the well?

A. I think I was. I think I had to work over.

Q.36: That is, you were on more than one tour at that time?

A. I started on daylight, and I had to work the [1822-91] afternoon tour.

Q.37: Do you recall about how many sets of back-scratchers were placed on the casing?

A. No, I don't.

Q.38: Was there more than one?

A. I don't remember.

Q.39: You don't remember how many there were? A. No, sir.

Q.40: State whether or not this scratcher which I hand you, and which has a ticket on it marked J. J. Gioia, March 27, 1952, has any resemblance whatsoever to the back-scratchers which you say were placed rotatively on the casing at this well in 1939? A. It does, yes, sir.

Q. 41: Do you recognize that scratcher as like the back-scratcher you spoke of?

A. It is like it, yes, very much so. It was bent like this, and I remember the prongs on it.

Q.42: You say "It was bent like this," referring to the wires as being bent sideways and upward?

A. On an angle, on the end.

Q.43: On an angle, on the end? A. Yes.

(Deposition of Joseph Jesse Gioia.)

Q.44: You stated that they were bent on an angle on the end? [1822-92] A. Yes, sir.

Q.45: Did the wires coming out from the collar come up the way they are shown on this scratcher you have in front of you, or at some other angle or direction?

A. No, they come back like that, just like these did, and they were bent over on the end.

Q.46: Then the wires which are in the scratcher in front of you are positioned in the same manner and the same way that the back-scratcher you saw placed on that casing—— A. Yes, sir.

Q.47: ——in 1949? A. Yes, sir.

Q.48: In this Kelly Well? A. Yes, sir.

Mr. Scofield: That is objected to as grossly leading.

Mr. Lyon: Summation only.

Mr. Scofield: It is grossly leading, and putting the answer in the witness' mouth, and also it should be noted on the record that just before he made the previous answer that the witness pointed to the collar of the scratcher, and indicated the wires coming out at a different angle than they actually come out from the collar of the scratcher, more in a radial position.

Mr. Lyon: That is a misstatement, purposeful misstatement [1822-93] of the witness' testimony.

Q.49: Did you indicate at any time that the wires came out at any different angle than shown by this scratcher in front of you?

(Deposition of Joseph Jesse Gioia.)

A. No, I meant at an angle just like the one in front of me there.

Q.50: This scratcher has attached to it a tag. It has a signature on it? A. Yes, sir.

Q.51: Whose signature is that?

A. That is mine.

Mr. Scofield: How is that scratcher designated, please?

Mr. Lyon: It has not got any designation. I will ask that this scratcher be marked as Petitioner's Exhibit A to this deposition.

(The scratcher referred to was marked by the Notary Public as Petitioner's Exhibit A, and made a part of this deposition.)

Q.52 (By Mr. Lyon): You spoke about beads. What did you mean by "beads" being put on the casing?

A. I meant little bumps were welded on the casing, so that when this scratcher hit them it would stop.

Q.53: Were those beads welded on both sides or [1822-94] only one side of the scratcher along the pipe?

A. Well, as far as I can remember, I think there was about two or three beads around there.

Q.54: When the back-scratcher was mounted on the casing—— A. Yes.

Q.55: ——you say there were two or three beads placed around the casing? A. Just bumps.

(Deposition of Joseph Jesse Gioia.)

Q.56: Bumps—— A. Yes.

Q.57: ——around the casing to stop the movement of the casing if it went in either direction?

A. To stop the movement of that. When it hit up there that is all the farther it could go.

Q.58: That is, the scratcher? A. Yes, sir.

Q.59: Now, how far could it go down?

A. I believe it was about ten feet.

Q.60: There were beads also down there?

Mr. Scofield: That is objected to as leading. Let it also be indicated on the record that during the last few questions and answers that counsel had the scratcher, Exhibit A to the Gioia deposition on his forearm, and was indicating during the questions with respect to the [1822-95] beads.

Mr. Lyon: I was indicating with respect to the direction and also with respect to the beads.

Q.61: I hand you a drawing, and I will ask you if that shows in any way anything comparable with the beads which you were speaking of?

A. Yes, it does. That is what I am—that is what I said, right there where that picture is.

Mr. Lyon: Let the record show that the witness in his last answer was pointing to the enlarged drawing and to the beads on the casing as shown therein.

Mr. Scofield: Has this been identified?

Mr. Lyon: I will offer the drawing just referred to by the witness in evidence as Petitioner's Exhibit B.

(Deposition of Joseph Jesse Gioia.)

(The drawing referred to was marked by the Notary Public as Petitioner's Exhibit B, and made a part of this deposition.)

Q.62 (By Mr. Lyon): Do you recall anyone else who worked on that particular well, Mr. Gioia, at the time in question? A. Yes, my driller.

Q.63: Who was he?

A. Ernie Edmonds, and V. L. Aguirre.

Q.64: You spoke of a welder. Who was the welder? [1822-96]

A. His name was Tom.

Q.65: Tom? You don't recall the rest of his name? A. Oh, no, I didn't.

Q.66: What did he do?

A. He put the beads on the casing.

Q.67: Did you see him do that?

A. Yes, I did.

Q.68: Did he do any other welding at that time?

A. Unless he mounted the shoe joint.

Q.69: The shoe joint is where on the casing?

A. On the end.

Q.70: The bottom end? A. Yes, sir.

Q.71: Do you recall what time of the year it was in 1939 that these back-scratchers were put on the casing?

A. Well, it was about close to the end of the year.

Q.72: Close to the end of the year?

A. Yes, sir. [1822-97]

* * *

DEPOSITION OF DAVIS L. HEARN

a witness produced on behalf of the Petitioner, having been first duly sworn to testify the truth, the whole truth and nothing but the truth, upon oral interrogatories, deposed and testified as follows:

Direct Examination

By Mr. Lyon:

Q.1: Will you state your full name?

A. David L. Hearn.

Q.2: What is your occupation?

A. President and General Manager of the Hearn Company.

Q.3: What business is that company in?

A. In the oil and oil tool business.

Q.4: Where is that business located?

A. 9928 South Romandel Avenue, Santa Fe Springs.

Q.5: What business were you in or by whom were you employed in the year 1940?

A. Union Oil Company.

Q.6: Where? A. Santa Fe Springs.

Q.7: In what capacity? [1822-129]

A. Foreman.

Q.8: Of what?

A. Foreman of Pipe and Salvage Departments and shops.

Q.9: Where was that located with respect to the address and business of which you are now president? A. Same address.

Q.10: It is the same shop?

(Deposition of Davis L. Hearn.)

A. The same shop. However, the address was given as Santa Fe Springs Road instead of Romandel. The yard has been divided to where we only occupy a portion of it. It is actually on Romandel now.

Q.11: Are you familiar with a device called a scratcher? A. Yes, sir.

Q.12: When did you first see any such device?

A. In the shops of the Union Oil Company at this location.

Q.13: Did you have anything to do with the mounting of those scratchers?

A. Yes, it was one of our functions to make up the shoe joints and float collar joints as part of the casing string.

Q.14: Did the Union Oil Company at that time have any practice with respect to the assembly of those joints? [1822-130] A. Yes.

Q.15: What was that policy?

A. The shoe was always installed at the shop and welded, and any other fittings such as scratchers and centralizers, float collars and metal petal baskets, the Baker fittings. That is all I can think of at the moment.

Mr. Lyon: I don't believe you finished your statement there. Will you read that answer?

(Answer was read by the reporter.)

Q.16 (By Mr. Lyon): What about them?

A. They were also installed.

Q.17: They were installed on the joint?

A. Yes, sir.

(Deposition of Davis L. Hearn.)

Q.18: At the shop?

A. Sometimes it was two joints actually.

Q.19: Did you take any part in the installation of the devices on those joints at that time?

A. I supervised the installation of them, with the exception of the welding.

Q.20: Were you present and did you observe the installation of the scratchers at that time?

A. Yes.

Q.21: How were the scratchers mounted on the joints?

A. They were slipped on the joint from the male thread, and they were spotted at designated positions on [1822-131] the joint to give them the proper spacing as the engineers wished, and there were spots welded on the casing to hold them in their position.

Q.22: Where were these spots positioned with respect to the scratcher? A. Above and below.

Q.23: Was the scratcher secured in any other way to the casing? A. No.

Q. 24: I hand you an instruction sheet, Exhibit B, and ask you if you can understand the illustrations given of a scratcher on what looks to be a rod, and, if so, tell us how that compares with the manner of mounting of the scratchers at the Union Oil Company shop, as you have testified.

A. I think it is the same practically.

Q.25: How long did you work for the Union Oil Company? A. Oh, a little over 27 years.

(Deposition of Davis L. Hearn.)

Q.26: How long before this 1940 did you work for the Union Oil Company?

A. I went to work in December, 1919.

Q.27: Did you ever see a B & W scratcher or a scratcher of the type which you have testified to mounted on the joint of a casing for the Union Oil Company in any other manner than as you have here described? [1822-132]

A. No, I don't think so.

Q.28: After the scratcher was mounted between the two rows of stops or lugs, as you have testified, and I am placing before you Exhibit B which you have heretofore identified, how could the scratcher move on the casing?

A. Well, it could slide up and down to the extent the stops would let it slide.

Q.29: Was it secured from any other directional movement? A. No.

Q.30: Could it rotate? A. Yes.

Q.31: Did you ever observe the fact that it was free to rotate? A. Yes.

Q.32: And you never saw any scratchers mounted by the Union Oil Company shop in any other manner than you have testified?

Mr. Scofield: I object to that as leading, grossly leading. Let the witness testify as to what he has seen. Don't tell him and ask whether yes or no.

Q.33: (By Mr. Lyon): Is that true?

A. That is the only way I ever saw them installed in the shops.

Q.34: Now, I hand you a scratcher, and I am

(Deposition of Davis L. Hearn.)

handing [1822-133] you Applicant's Exhibit 2. How does that compare with the scratchers which you first mounted in the shops of the Union Oil Company?

A. I don't know whether it is exactly the same as the first one or not, but the general design is the same. I am not certain about the way it is mounted to this ring, but the shape and all in general, I would say it is about the same.

Q.35: As near as you can recall, is it or is it not a fair replica of what you first mounted, and I mean Exhibit 2? A. Yes.

Q.36: Were you familiar with and did you know Mr. Philip H. Jones?

A. The research at the refinery?

Q.37: Yes. A. Yes.

Q.38: Do you know any work that Mr. Jones did with respect to cementing?

A. Well, he ran a series of cementing tests, I know. I don't know what practical application they had in the field, if any, but I happened to be present at an API meeting in Long Beach where he gave a talk and demonstration as to some of his findings on this cementing of casing in an oil well. [1822-134]

Q.39: Did that report and talk have anything to do with these scratchers, do you recall?

A. They were mentioned as a means of getting better cement jobs around the casing.

Q.40: When did you mount these scratchers in the manner which you have testified to with relation

(Deposition of Davis L. Hearn.)

to the time that you heard this report given by Mr. Jones at Long Beach?

A. Oh, I actually don't know whether it was before or after, but it was, I would say about that time, anyway. I know there was considerable interest in getting cement around the casing instead of having it channel up the pipe and cause failure, and I would say it was about that time.

Mr. Lyon: That is all.

The Witness: It might have been months ahead or months afterwards actually. I don't know.

Q.41 (By Mr. Lyon): It might have been both, mightn't it? A. Sure, it might, too far away.

Q.42: For how long a period of time were you in charge of the shop there?

A. From 1932 until 6 years ago, 1947. [1822-135]

* * *

DEPOSITION OF PHILIP H. JONES

a witness produced on behalf of the Petitioner, having been first duly sworn to testify the truth, the whole truth and nothing but the truth, upon oral interrogatories, deposed and testified as follows:

Direct Examination

By Mr. Lyon:

Q.1: State your full name, residence and occupation, Mr. Jones.

A. My name is Philip H. Jones. I reside at 4457 Via Pinzon in Palos Verdes Estates, California. I am a retired chemical engineer and petroleum en-

(Deposition of Philip H. Jones.)

gineer. I retired from the position of Supervisor of Drilling and Production Research for the Union Oil Company of California in 1948 or '49, I don't remember which.

Q.2: You were educated in Stanford University?

A. Yes.

Q.3: And you obtained a degree of Chemical Engineer—— A. Yes, sir.

Q.4: At Stanford? A. Yes.

Q.5: How long did you work for the Union Oil Company?

A. Approximately 26 years. [1822-142]

Q.6: As Supervisor in Charge of Research what were your duties for the Union Oil Company?

A. To supervise the research having to do with the drilling and production of oil wells.

Q.7: How long did you occupy that position, Mr. Jones? A. Oh, approximately 12 to 14 years.

Q.8: Sometime in 1939, in your capacity as Supervisor of Research a problem concerning cementing was presented to the Research Department; is that right?

A. That is correct.

Q.9: That problem had to do with what?

A. There had been considerable difficulty in the field operations in the cementing of oil wells to prevent the passage of water from wet formations into the well proper, and we were requested to investigate all factors that we could think of that might influence this failure of obtaining proper water shut-off, and to devise means, if possible, to

(Deposition of Philip H. Jones.)

improve the percentage of successful water shut-off jobs or all cementing jobs.

Q.10: Did you set up a research department on that? A. Yes, sir.

Q.11: Where was it set up?

A. The major work was conducted at the Dominguez Oil Field, specifically at the Central Mud Plant of the [1822-143] Union Oil Company at the Dominguez Oil Field, which was located in the westerly portion of the field, about a few hundreds north of Victoria.

Q.12: That is in Los Angeles County?

A. That is in Los Angeles County, yes.

Q.13: Near Long Beach, California?

A. Well, it is probably closer to Wilmington, but it is not far from Long Beach.

Q.14: As a portion of that problem were you concerned with the bond existing between the cement and the walls of the well?

A. I considered that as the major problem.

Q.15: That is, you considered the reason for water seepage or failure of cement to obtain a water shut-off a failure of the bond between the cement and the ground formation?

A. I believed that the major cause for failures was the failure of obtaining proper bond between cement and the wall of the drilling hole.

Q.16: You state that you set up a project to investigate this phase of cementing. In setting up that project just what did you do?

A. We built four so-called test wells in an effort

(Deposition of Philip H. Jones.)

to simulate the conditions that would prevail in cementing an oil well. Each of these test wells consisted [1822-144] essentially of a section of pipe. I have forgotten the diameter. It was, let us say, about seven inches. The pipe was perforated and was split longitudinally and provided with flanges, external flanges, that is, at the edges where the pipe was split so that the pipe could be bolted together in substantially its original form and disassembled at will. Inside this perforated pipe we suspended canvas bags which were approximately the same outside diameter as the inside diameter of the perforated pipe. Inside the canvas bags we provided means for introducing three-inch pipe, which simulated the pipe that might be cemented in an oil well. This pipe was provided with means whereby it could be raised or lowered at will, or rotated, and it was connected by a suitable system of pipes and valves, with pumps, by means of which we could circulate fluids through the pipe to the bottom of the well or the test well, and up the annulus between the pipe, the three-inch pipe, and the walls of the canvas bags. The fluid then overflowed into a collecting trough at the top of the assembly, and was returned by gravity to a sump from which the pumps could take suction. We could thus circulate through the test well a desired fluid, and thereby simulate the conditions that would prevail in the cementing of an oil well, the canvas liner of the perforated pipe acting as a permeable barrier on which mud cake could be laid down similar to the mud cakes [1822-145] laid down

(Deposition of Philip H. Jones.)

on permeable formations. That was the essential nature of the test equipment.

Q.17: Did you make runs of these test wells to determine if the mud cake was laid down on the inner surface of these permeable canvas bags?

A. Yes, we did, and mud cakes were laid down on the inner surface of the canvas bags.

Q.18: With your experience in oil well operations, was this mud cake comparable with the mud cake laid down on the permeable formations of an oil well? A. Yes, it was similar.

Q.19: After you had these four test wells constructed, and had carried out your preliminary tests of that apparatus, what did you do with the test wells?

A. We made as exhaustive series of tests as we could to determine the effects of not centralizing the casing in the test well, the effects of different kinds of mud, the effects of water circulation ahead of the cement, the effects of different kinds of cement, and the value of every device or method that we could find that offered promise of improving the bond between the formation and the cement, the formation in this case being the walls of the canvas liners.

Q.20: How, Mr. Jones, did you obtain all these different kinds of cements, these different methods and [1822-146] these different devices that you tested?

A. We contacted all our—that is, as many vendors of such devices as we could find. We got Union Oil Company engineers to contact anyone that they might know who would have any device or method

(Deposition of Philip H. Jones.)

that might be of value. We contacted the engineers of quite a number of other oil companies, and asked them to suggest apparatus and methods. We went through the trade journals, and attempted to find all the devices and methods that were available to the industry, and we contacted these vendors or the main manufacturers of devices, and asked them to submit samples of their materials or devices for test purposes. In other words, we did everything we could to publicize the test, so that we would have as complete and comprehensive a study of available methods for improving cementing as we could. It was a rather expensive operation, and we didn't want to repeat it. We wanted to get everything done that we could.

Q.21: Was or was not this a public demonstration, in which the public at large was invited to participate?

A. Yes, the test apparatus was available to anyone who wanted to come there, and many engineers from other companies, many engineers from the Union Oil Company and many vendors did attend. They were at liberty to observe any of the tests, to see any of the results and, as a matter of fact, they were asked to supervise the use— [1822-147] the vendors or manufacturers were asked to supervise the use of their particular apparatus or method.

Q.22: You state that engineers from other oil companies were invited there. Did such other engineers come to these tests and observe the progress and results and operations?

(Deposition of Philip H. Jones.)

A. Yes, there were quite a number of them visited the site of the test, observed the results, and and saw some of the operations. I, of course, was not there all the time, but I know—I remember having seen quite a number of engineers and vendors from other companies.

Q.23: This test work, or this work that was carried out at this field, was that adjacent to a public highway?

A. The nearest highway was Victoria Street, which ran east and west, oh, some little distance to the south of the test side, maybe two, three, four hundred yards, something like that. I don't know how far it was, but it was not far.

Q.24: There was no barrier to keep anyone from coming in and observing exactly what was going on, was there? A. None whatever.

Q.25: When was this work carried out?

A. Well, in the fall and winter of 1939, and some of it in the early part of 1940. I think the actual testing [1822-148] operations were confined largely from September of '39, to December of '39. I think a little work carried on over into January, 1940.

Q.26: Mr. Jones, you state that you have retired at the present time. Do you have any connection with any company that supplied any equipment for any of this work that was done at Dominguez Field?

A. None whatever.

Q.27: Do you have any connection with B & W?

A. None whatever.

(Deposition of Philip H. Jones.)

Q.28: Have you been paid anything by B & W?

A. Well, I was given one dollar once for a taxi fare that I had spent, and that is absolutely everything.

Q.29: Have you been promised that you would be paid anything at any time? A. No.

Q.30: Have you any connection with the Weatherford Oil Tool Company? A. No.

Q.31: Or with Jesse E. Hall? A. No.

Q.32: Have you been paid anything by either that company or that individual? A. No.

Q.33: Are you acquainted with Mr. Jesse E. Hall, Sr.?

A. Well, I have met him. I wouldn't say that he [1822-149] was a close acquaintance.

Q.34: Are you acquainted with Mr. Bruce Barkis? A. Yes.

Q.35: Are you acquainted with Mr. Kenneth A. Wright? A. Yes.

Q.36: Were all of these three individuals among those who were present at the demonstrations carried on in this research project at Dominguez Field? A. Yes.

Q.37: Did all of them have equipment that was under test or observation during those demonstrations?

A. Hall had a centralizer, and Barkis and Wright were operating as a unit, and they had what we called "scratchers" that we tested.

Q.38: Subsequently a report of these operations was rendered, was it not? A. Yes.

(Deposition of Philip H. Jones.)

Q.39: I will hand you Petitioner's Exhibit L for identification, and ask you if you can identify that, Mr. Jones?

A. Yes. This is a copy of a report which Mr. Berdine and I prepared, covering the work of this investigation.

Q.40: Who is Mr. Berdine?

A. Mr. Berdine was one of my assistants who had [1822-150] immediate charge of the conduct of the work at Dominguez.

Q.41: Do you know where Mr. Berdine is at the present time?

A. I believe that he is in the Middle East, at Dahrein—Bahrein Islands.

Q.42: Bahrein Islands?

A. Bahrein Islands.

Q.43: How long has he been there, do you know?

A. I don't know. He has been there several years.

Q.44: Several consecutive years, to your knowledge?

A. I believe that he returned home, that is, to the States, once for a short vacation, but I didn't see him. I heard that he was here.

Q.45: This report you have in front of you was prepared, you say, by you and Mr. Berdine?

A. That is right.

Q.46: When?

A. It was prepared in the early part of 1940.

Q.47: What was the purpose for which this re-

(Deposition of Philip H. Jones.)

port was prepared, as it is before you in Exhibit L for identification?

A. The purpose of this report was to—well, it was really twofold. The major purpose was to acquaint the officials and interested engineers of the Union Oil Company with the results of the investigation, and to recommend to [1822-151] them methods and apparatus for use that we believed would improve the shutting off of water in oil wells, or increase the effectiveness of the bond between the walls of the hole and the cement. The second purpose of the report, which is divided in two parts, was to present the results to the AmericanPetroleum Institute, Drilling and Production Division. This took the form of a paper which was presented in, I think March, 1940. The paper that was presented to the American Petroleum Institute was not as complete, quite as the entire report. We did not feel that the recommendations that we had made were suitable for presentation to a public meeting, and we prepared a supplement which went to the Union Oil Company engineers. This supplement contained our recommendations and some additional details.

Q.48: This Exhibit L, as it is before us, has an enclosing cover, and that cover has on it "Union Oil Company of California," and is titled "Oil Well Cementing. Factors Influencing Bond Between Cement and Formation, Los Angeles, California," and it has a writing on its exterior "Henry E. Winter."

(Deposition of Philip H. Jones.)

Did you bind those reports in the way this Exhibit L for identification is bound? A. Yes.

Q.49: Do you know who Henry E. Winter is?

A. Yes. [1822-152]

Q.50: Who is Henry E. Winter?

A. Henry E. Winter was the District Engineer, that is, the District Petroleum Engineer for, I believe the entire Los Angeles Basin. His headquarters were near Santa Fe Springs or at Santa Fe Springs.

Q.51: Are you familiar with Mr. Winter's signature?

A. No, I am not. I wouldn't know whether that was his signature on the front there or not.

Q.52: Underneath the cover of this Exhibit L is stapled a copy of a letter dated March 15, 1940, and then the stenographic initials at the base of that letter are "PHJ:MH."

Are you familiar with that letter? A. Yes.

Q.53: Did you dictate that letter personally?

A. Yes.

Q.54: That letter was signed by Mr. Basil Hopper? A. Basil Hopper.

Q.55: Who was Mr. Hopper?

A. Mr. Hopper was the Manager of the Research Department at that time.

Q.56: State whether or not it is true that this letter was prepared by you for signature by Mr. Hopper for sending copies of this report to the listed individuals listed at the base of the [1822-153] letter? A. It was.

Q.57: So that copies of this report, identical

(Deposition of Philip H. Jones.)

with Exhibit L for identification, were sent to who?

A. Sent to Mr. A. C. Rubel, who was Vice President in charge of drilling and production operations for the Union Oil Company; Mr. Ted Miles, who was Manager of the Field Department; Mr. W. S. Eggleston, who was Chief Petroleum Engineer for the Union Oil Company; Mr. Howard Pyle, who was Chief Production Engineer for the Union Oil Company, and Mr. H. E. Winter, who was the District Engineer stationed at Santa Fe Springs; Mr. C. A. Steiner, another Union Oil Company District Engineer. I don't recall where he was stationed at that time. Mr. B. R. Griffith, who was the District Engineer at Santa Maria, and Mr. D. H. Sheldon, who was also another Petroleum Engineer. I don't recall where he was located at the time.

Mr. Scofield: Who did you say Rubel was?

The Witness: He was Vice President of the Union Oil Company, in charge of exploration, drilling and production, and such related subjects.

Q.58: (By Mr. Lyon): Next in this Exhibit L for identification there is a fly sheet, "Oil Well Cementing. Factors Influencing Bond Between Cement and Formation, Research and Development Department, Research Division Report No. 574, Project Order No. 72-407, March 19, 1940, by P. H. Jones [1822-154] and D. Berdine," followed with nine pages which, from your previous testimony, I take are the pages which constituted the report given to the Union Oil Company Engineering and Research and Development Departments, and which

(Deposition of Philip H. Jones.)

did not constitute a portion of the report given to the API; is that correct?

A. That is correct. I think we should point out that I assumed that the Engineering Department I referred to was the petroleum engineering group within the Union Oil Company. That would also include the Production Engineer.

Q.59: These first nine pages, which I have just referred to was the petroleum engineering group within the Union Oil Company. That would also include the Production Engineer?

These first nine pages, which I have just referred to, list the manufacturers, the suppliers of equipment, and among those listed are B & W, Inc., Barkis and Wright, and those are Mr. Bruce Barkis and Mr. Kenneth A. Wright, here present in the room; is that correct?

A. That is correct.

Q.60: Also in that list is Cosco Manufacturing Company, who furnished a spiral well bore cleaner and casing centralizers. Is that the company that you have testified that Mr. Jesse E. Hall, Sr., was connected with?

A. I don't know what the connection was, but that [1822-155] is the company that Hall was involved with.

Q.61: And he brought the centralizers to these demonstrations, did he?

A. Well, I can't remember whether he personally brought them there or whether he gave them to me or one of my men and we brought them there, but they were obtained.

(Deposition of Philip H. Jones.)

Q.62: From him? A. From him, yes.

Q.63: Did Mr. Hall also observe any of the other operations of these tests that were performed by the Union Oil Company?

A. I can't say. I don't know what he saw and what he didn't see. I might say that when we completed a test the evidence of the results consisted of the three-inch pipe with the cement around the outside of the pipe. As a matter of fact, that is the way, one of the principal ways we evaulated the rest of the test. After the cement had set we would strip off, cut off the canvas and expose the material under the canvas, which consisted of a mud cake and the cement. We would examine the mud cake and we would remove the mud cake by washing. We would examine the cement, and in some cases we would chop away the cement from the device that might be used to improve the bond between cement and formation, photograph the results, and then the pipe and cement were pulled aside into a field nearby, where anyone could inspect them at any time. Now, I think anybody that [1822-156] was there could have seen what had been done up to the time he was there, but I don't know what Mr. Hall saw.

Q.64: All of those cement columns which were formed were laid out in the open for inspection of anyone; is that correct?

A. Yes, that is right.

Q.65: In these first nine pages are given the recommendations you have stated which you made

(Deposition of Philip H. Jones.)

to the Union Oil Company; that is correct, is it not?

A. That is correct.

Q.66: Your recommendation, then, as I read this report, was that the Union Oil Company should utilize, to increase the bond between the cement and the formation, B & W scratchers which were of the type which you had used in these determinations; is that correct? A. That is correct.

Q.67: To your knowledge, did the Union Oil Company follow that recommendation?

A. Yes.

Q.68: In these tests, and accompanying this report, Exhibit L, are a series of photographs and, as I understand the report, these photographs accompanied the reports which were distributed at the API meeting, and correspond with slides which were shown at that meeting; is that correct?

Mr. Scofield: I object to the question as leading. [1822-157] I would prefer to have the Patent Office note that here the counsel has stated what happened and asked the witness if that is correct. I would prefer to have him testify with regard to what actually happened.

Q.69: (By Mr. Lyon): State what is correct. What was done at the API meeting, were there copies of the report distributed, or weren't they?

A. Yes, they were the usual pre-prints in the form of little booklets which were available at the entrance to the lecture room, and these booklets all contained copies of the photographs that were a

(Deposition of Philip H. Jones.)

part of the original report. I personally took all of the photographs that are shown here.

Q.70: You mean you were actually the cameraman who took all the photographs?

A. I took the pictures and developed the negatives and made the prints.

Q.71: Where was this API meeting held?

A. It was held in Los Angeles, I believe at the Biltmore Hotel.

Q.72: When?

A. I believe it was March 19, 1940, or thereabouts.

Q.73: Was that a regular division meeting of the American Petroleum Institute?

A. I believe it was the Pacific Coast Section of [1822-158] the Drilling and Production Division of the American Petroleum Institute.

Q.74: Do you remember approximately how many people were in attendance at that meeting?

A. Oh, I don't—I wouldn't want to estimate. There were several hundred. I don't know how many were there.

Q.75: You don't know how many hundreds?

A. No, I wouldn't want to guess.

Q.76: What is the American Petroleum Intitute? A. Well, in detail, I don't know.

Q.77: You are a member?

A. No, I am not a member. I am not now and, frankly, I don't know whether I was then. Possibly the Union Oil Company paid my dues. We all assumed we were members. I think you could probably

(Deposition of Philip H. Jones.)

find someone else who could give a better definition of the API than I. In general, it is an association of people concerned, involved in the production and use and refinement of petroleum.

Q.78: Who gave the paper at this March 19 meeting of the API? A. I did.

Q.79: You mean you actually presented the paper? A. Yes.

Q.80: Did you read from the paper?

A. No, I did not. I had slides, lantern slides made from the photographs, lantern slides of the photographs [1822-159] and the tables and the drawings showing the nature of the apparatus. These slides were shown on the screen, and I talked from the slides. I did not have—I did not read the paper at all.

Q.81: You had the paper there?

A. I had the paper with me, yes.

Q.82: Did you follow pretty well the text of the paper?

A. I would say that I did not. I would show a slide, and describe the slide, the picture, and discuss my interpretation of its significance, and I gave a brief description of the apparatus and procedures followed before showing the slides.

Q.83: Those slides, as I understand it, were slides of all of the tables, drawings and photographs which accompanied——

Mr. Scofield: I object to that.

Q.84 (By Mr. Lyon): ——the report?

A. Beg pardon?

(Deposition of Philip H. Jones.)

Mr. Lyon: He has already so stated.

Mr. Scofield: He didn't say so. Just ask him what they were.

The Witness: All right, the slides were copies of the drawings, I believe all of them, but I am not certain, of the table or tables, and all of the photographs were [1822-160] reproduced in the form of slides, and they were all shown.

Q.85 (By Mr. Lyon): And those drawings, tables and photographs which you referred to in your last answer are those accompanying Exhibit L for identification? A. They are.

Q.86: You stated that you personally took the pictures, prints of which are attached to Exhibit L for identification? A. Yes, I did.

Q.87: That includes, I presume, the photograph of Figure 14, which accompanies Exhibit L?

A. Yes.

Q.88: Can you tell me how the scratcher in the Figure 14 is held in position on the casing? I presume the pipe is casing?

A. Yes. In that particular case I took the picture before the scratcher device had been put on the pipe for use, and the scratcher was quite loose on the pipe, and I remember I had some difficulty making it stay there. I finally got a piece of wood and wedged it in back of the pipe so that it wouldn't show in the photograph, to hold the scratcher in place temporarily while I took the picture.

Q.89: You took the photograph which is Figure 16 of that report?

(Deposition of Philip H. Jones.)

A. Yes, sir. [1822-161]

Q.90: You have stated previously that in some instances you chipped away the cement. Does this illustrate one of those instances?

A. Yes, it does.

Q.91: What does Figure 16 show?

A. Beg pardon?

Q.92: What does Figure 16 show?

Mr. Scofield: Read that question again for me.

(The question was read by the reporter.)

The Witness: It shows the effects of the wire wall scratchers which were shown in Figure 14 on the removal of the mud cake from the walls of the hole, and shows that there was very little mud cake left between the cement and the canvas wall, and that an excellent job of bonding had been obtained. Do you wish a description of the method that was used?

Mr. Lyon: Not now.

Mr. Scofield: Will you read that answer?

(The answer was read by the reporter.)

Q.93 (By Mr. Lyon): I am handing you Exhibit K, which is a photographic reproduction of Figure 16 as it appears in Exhibit L for identification, and ask you to make the comparison and see if Exhibit K does, in all respects, correspond with Figure 16 of Exhibit L for identification?

A. Yes, it is substantially identical. [1822-162]

Q.94: I want you to advise me as to what is

(Deposition of Philip H. Jones.)

shown on Exhibit K at the points which I will mark "A" four times on that photograph.

Mr. Scofield: Let me see it before he answers.

The Witness: Will you read me that question, please?

(The question was read by the reporter.)

The Witness: At each of these points indicated by "A" the cement had been removed, exposing the ends of the scratchers which had been illustrated by Figure 14.

Q.95 (By Mr. Lyon): One of those then is the scratcher shown in the photograph of Figure 14 to the report, Exhibit L for identification?

A. Yes, it is.

Q.96: Then subsequently the mounting of the scratcher shown in Figure 14 was completed; is that correct? A. Yes.

Q.97: How was it completed?

A. It was completed by slipping the scratcher over the pipe and locating it at the desired point on the pipe by welding a ring of approximately one-quarter inch rod around the pipe, and to the pipe below the scratcher, and another similar ring was welded to the pipe at a distance of about a foot above the lower ring. The scratcher was thus free to move vertically between the confining rings, and free to rotate around the pipe. It was quite loose, and [1822-163] we always tested, when we were using these scratchers, to see that they were free.

Q.98: Were there any means used other than

(Deposition of Philip H. Jones.)

you have described to mount or secure the scratcher in position on the pipe? A. There was not.

Q.99: Did you at any time use any such thing as a spline or any other device to secure any one of the wall scratchers you used to the pipe to influence its moving vertically without rotation?

A. In no case were the Barkis and Wright scratchers confined by a spline or any other device except the rings that I noted above, which confined the movement to a distance of about a foot.

Q.100: You have described the subsequent mounting of the scratcher of Figure 14 on the casing. How did that mounting compare with the mounting which is shown in the photograph, Figure 18?

A. The photograph in Figure 18 shows a scratcher mounted between confining rings welded on the pipe. In placing the scratcher shown in Figure 14 on the pipe for test purposes an identical procedure was used.

Q.101: I will refer you to Exhibit G, which is a photographic reproduction of Figure 18, and ask you to check to determine that that is [1822-164] true? A. It is too slightly enlarged.

Q.102: There are certain spots which are noted on that photograph with the word "Tack," and I note that that tacking is always on the outside of the rings away from the scratcher. Was there any reason for that?

A. The reason, as I recall it, for putting the

(Deposition of Philip H. Jones.)

tack on the outside of the ring so that the scratcher could never contact it was to prevent any weld material from getting in back of the scratcher and thereby prevent its rotation or free movement. The rings were always welded, as shown here, with the weld on the side of the ring opposite from the scratcher, so that the scratcher could never be held by the weld.

Q.103: Was or was not that same procedure followed in mounting the scratcher of Exhibit 14?

A. Yes, it was.

Q.104: I mean of Figure 14? A. Yes.

Q.105: Was that also true of the mounting of the scratcher of Figure 26? A. Yes.

Q.106: I notice in your recommendations in the first nine pages of Exhibit L for identification that there is no differentiation made with respect to any one of the scratchers of Figures 14, 18 or 26, with respect to your recommendations [1822-165] for use. Can you explain that? My point is you don't pick out one of them and recommend that, but the recommendation is as to B & W scratchers.

A. My recollection is that I was satisfied with the performance of any one of these scratchers. They were all good, and that I believed that if they used the Barkis and Wright scratcher, a Barkis and Wright scratcher of any of these types, that they would perform satisfactorily. I don't recall exactly the details of the device they were marketing at the time, but I felt that it was the equivalent of these scratchers.

(Deposition of Philip H. Jones.)

Q.107: Did you deliver this paper, Exhibit L, on more than one occasion?

A. Yes, I did. I presented it at, I think it was the Shell Hall on Signal Hill at some time subsequent to the presentation of March 19. I don't recall the date.

Q.108: That was Shell Hall at Long Beach, California?

A. In Long Beach, on Signal Hill, yes.

Q.109: Who was present at that presentation?

A. There were several hundred people there, most of them representing oil companies, vendors, and so on, people interested. I think it was a meeting sponsored by the local section of the American Petroleum Institute.

Q.110: Did you use lantern slides in this presentation also? [1822-166]

A. Yes, I did. I followed the same general procedure.

Q.111: When you gave this report to the API meeting on March 19, 1940, at the Biltmore Hotel in Los Angeles, California, you state that you used lantern slides and described the equipment which was illustrated by the lantern slides. Now, I presume therefore that you exhibited a lantern slide corresponding with Figure 14 of the report, Exhibit L; is that right? A. That is right.

Q.112: And you also had a lantern slide of Figure 26, and also Figure 18 of Exhibit L for identification? A. Yes.

Q.113: On each of these cases state whether or

(Deposition of Philip H. Jones.)

not you stated how the scratchers were mounted on the casing or pipe shown, and how they operated as so mounted.

A. I can't remember the words I used.

Q.114: I know, but can you remember the substance of what you said?

A. The substance of what I said was that as I have stated here. They were mounted on the casing, free to move up and down or around on the casing.

Q.115: By "move around," what do you mean?

A. They could rotate with respect to the casing, but I do not recall the words I used. [1822-167]

Q.116: But you do recall the fact that you made such a description?

A. I made some sort of a description of that sort. I think I described every apparatus fairly closely, although, as I say, I do not remember the words.

Q.117: The exact words that you used?

A. No, I don't remember. I tried to make a complete description of the apparatus.

Q.118: I notice on Page No. 5 of the report made to the engineers of the Union Oil Company that there is a footnote, note "1."

Did you have with you at the time you made this report to the API on March 19, 1940, and also at the Shell Hall in Long Beach a copy of the first nine pages of this report, Exhibit L?

A. I don't know positively whether or not I had it there. I believe I did, but I don't know positively.

(Deposition of Philip H. Jones.)

Q.119: That footnote describes what, with relation to the scratchers of Figures 14, 18 and 26, if anything? A. Shall I read it?

Q.120: Just tell me in your own words what it describes, and does it relate to those particular figures first, or all of them, of 14, 18 and 26.

Mr. Scofield: Let the record indicate that he has it before him, so that he can read it if he cares to. [1822-168]

Mr. Lyon: He is going to read it to himself, but I do not mean necessarily he has to read it in the record. He can read it in the record if he wants to.

The Witness: This footnote applies to the scratchers as shown in Figures 18, 26 and 14, and it was my understanding that it would apply to any scratchers used in the actual cementing of oil wells, and it simply says that the scratchers are free to rotate on the casing, and vertical movement with respect to the casing is limited to about a foot by confining rings welded to the casing. It says that "Thus in running the casing the scratchers remain stationary when the casing is lifted to release it from the spider."

Q.121 (By Mr. Lyon): Does that footnote——

A. There is some additional descriptions of the commercial scratchers here.

Q.122: Was that footnote included in all the copies of that report, including the original, which were supplied to each of the parties of the Union Oil Company, as you have heretofore testified to?

A. Yes, it was.

(Deposition of Philip H. Jones.)

Q.123: That footnote then was a part of the original report which was dated March 15, 1940; is that correct?

Mr. Scofield: I object to that as leading.

The Witness: It was dated, the report was dated March 19, 1940, and the letter of transmittal, which was to [1822-169] Mr. Earle W. Gard, who was the head of the Research and Development Department, that letter of transmittal is dated March 15, 1940.

Q.124: (By Mr. Lyon): Was there any reason that you recall for dating the report March 19, 1940?

A. I don't know. I can't explain that discrepancy.

Q.125: Was that the date of the API meeting?

A. I believe that March 19 was the date that the report was submitted to the API, but I don't know why this supplementary report was dated March 19 and the letter of transmittal on March 15.

Q.126: I hand you a scratcher, Mr. Jones. I will ask you if that scratcher appears familiar to you? A. Yes.

Q.127: How does the scratcher which I have handed you, and which I will now ask be marked as Petitioner's exhibit next in order for identification, compare with the scratcher which you photographed and which is shown in Figure 26 of the report, Exhibit L?

(The scratcher referred to was marked by the Notary Public as Petitioner's Exhibit M

(Deposition of Philip H. Jones.)

for identification and made a part of this deposition.)

The Witness: I would say it is substantially identical with—the one I have in my hand is substantially [1822-170] identical with the one I photographed and reproduced as Figure 26 of the report.

Mr. Lyon: I will offer the scratcher heretofore identified as Exhibit M in evidence as Exhibit M to this deposition.

Mr. Scofield: Objected to for the reason that it has not been proved as to whether it is one that has been produced or manufactured contemporaneously or whether it was one of the original scratchers. This witness says it appears to him to be identical to the scratcher that is shown in Fig. 26. Certainly, if it is a contemporaneous production, it is not admissible, except if it is represented to be a replica; if that is what it is, I have no objection to it.

Mr. Lyon: It is represented to be a replica. The witness has not testified it is identical with the one shown in the photograph, but he has also identified it as being identical with the one which he photographed.

(A short recess was here taken.)

Q.128: (By Mr. Lyon): Before your report, Exhibit L for identification, was given did you discuss with the engineers of the Union Oil Company or with anyone else your recommendations as to the use of B & W scratchers?

(Deposition of Philip H. Jones.)

A. Yes, I did. I don't recall the men I discussed it with, but I did discuss the recommendation with several [1822-171] of the Union Oil Company men.

Q.129: So that your recommendation in the use of B & W scratchers was made verbally to some engineers of the Union Oil Company before you released the report on March 15 or 19, 1940; is that correct?

A. Yes, I discussed it. I don't remember the details of the discussion, but I am sure that they knew what I was going to recommend.

Q.130: You have testified that the scratchers of Figures 14, 18 and 26 were mounted upon the pipes or casings to be free to rotate thereon, and to move vertically between the ring stops. In the actual demonstrations that you performed using these scratchers can you state how these scratchers operated to remove mud, and whether or not the scratchers did rotate?

A. To answer your last question first, I know that the scratchers were free to rotate on the pipe before the test, because we tried them to see that they were free to move both vertically and in all directions. Obviously, we could not see what was happening inside the test apparatus while it was operating, but the evidence, as supplied by the cement itself where the scratchers had been used, indicated to me that the scratchers had rotated.

Q.131: Was the mud cake removed from the canvas bag on these operations? [1822-172]

A. You mean during the course of the test?

(Deposition of Philip H. Jones.)

Q.132: Yes.

A. Or after their inspection?

Q.133: During the course of the tests.

A. Yes, the mud cake was substantially all removed.

Q.134: What kind of a bond did you obtain between the cement and the canvas bag?

A. I considered it an excellent bond.

Q.135: How did that bond compare with the bond that you obtained by the use of other instrumentalities which you tested in an effort to improve the bond between the canvas bag and the cement?

A. Of the devices that we tested, namely, the devices that depended on scraping or scratching action, I should say that they were very much the same; that is, the spiral guide, the cement basket and the straight wall guide and the scratchers all did what I considered a good job of removing the cement, but none of them—removing the mud, let me correct that—the mud cake, but none of them, however, did as good a job as the acid did.

Q.136: How were these scratchers operated? What was the operation in this test well, what did you do?

A. The scratchers were mounted on the casings, the three-inch pipes, as I have previously indicated. The pipes were put in the test well, that is, the device that [1822-173] simulated the wells, and mud was circulated from a sump through the pipe and up the annulus outside the pipe and between the canvas

(Deposition of Philip H. Jones.)

and the—circulating up through the annulus, between the pipe and the cement bag, and then the test well with its mud was permitted—containing mud was permitted to stand overnight, and the actual cementing operations were carried out. In general, the mud was recirculated for a period of time, and during this period of circulation the three-inch casing with the scratchers attached was raised and lowered, usually at a speed of about twelve and a half feet a minute, and in some cases water was then pumped behind, after the mud. In other words, the circulation of mud was discontinued, and water was substituted for it for a short period of time. This operation using water was not always carried out. Following which a cement slurry was circulated in—as I pointed out, in some cases the cement slurry followed the mud circulation, and in other cases there was a short interval during which water was circulated between the application of the mud and the cement. The casing with the attached scratchers was raised and lowered continuously throughout this last mud circulating period, throughout the period of water circulation, where water was used, and during the period while cement was being pumped. Thereafter the pipe was fixed in place so that it could [1822-174] no longer move, all circulation was stopped, and the entire apparatus was allowed to stand. I believe we let it stand 24 hours, but I am not sure of the exact time. We would then detach the apparatus from the supporting tank, laying the simulated well on the ground, unbolt the

(Deposition of Philip H. Jones.)

perforated section of exterior pipe. We then slit the canvas bag longitudinally and peeled the canvas off the contents of the bag, which, in cases where there had not been mud cake removal, we find a deposit of thick mud cake, and where the mud cake had been removed completely there would be no evidence of mud at all. Where the mud cake had been almost completely removed we would find a thin mud cake in some spots and almost none in others. I believe that the illustration in Figure 27 shows the nature of the results rather clearly.

Q.137: Now, let me ask you this: The report, Exhibit L for identification, contains detailed specific figures of sizes, operations, velocities, times and other specific figures. Are those in each case correct and as a result of actual measurement and determination?

A. Each of those figures is the result of an actual observation, and I believe they are correct. Of course, I have made mistakes.

Q.138: So far as you know, they are correct?

A. Well, I think there is one error in [1822-175] the report that I have found; that is just one that I have found.

Q.139: What is that error?

A. I think I showed a velocity of—I think it was 25 feet a minute in one case, where I believe it should have been twelve and a half feet a minute for the movement of the casing.

Q.140: That was on what page?

A. I don't recall where it was. That was one

(Deposition of Philip H. Jones.)

error I found. There may be others, but then, as far as I know, the report is accurate except for that.

Q.141: You have stated in your testimony a three-inch casing. State whether or not it is true that that expression "three-inch casing" is used in the common oil field parlance to mean a casing which has approximately a three-and-a-half-inch o.d.?

A. Yes. I believe the "three-inch" refers to the i.d. of the casing, but I am not absolutely certain of that.

Q.142: But that casing was approximately three-and-a-half-inches o.c.?

A. I think that is right, three, in that order. I don't know exactly what it was.

Q.143: On these tests that were conducted with B & W equipment, were any representatives of B & W present? [1822-176]

A. At various times both Mr. Wright and Mr. Barkis were there.

Q.144: Were the scratchers that are shown in these photographs of the report Exhibit L actually delivered to the place by either Mr. Wright or Mr. Barkis?

A. I don't remember the exact method of delivery. I believe that they brought them to the site themselves. It is possible that either I picked some of them up or some of my men picked them up, but I believe that Barkis and Wright delivered most of them. As I say, I am not certain of that.

Q.145: The original of this report, Exhibit L,

(Deposition of Philip H. Jones.)

the original copy of it, state whether or not that is in the library of the Union Oil Company, to your knowledge.

A. Yes, a copy of this report is present at the Union Oil Company Research Department Library, presently located at Brea, California.

Q.146: In addition to the scratchers shown in Figures 14, 18 and 26 of Exhibit L for identification, did Mr. Wright or Mr. Barkis or B & W deliver to the side any other scratchers?

A. Other than the ones shown here?

Q.147: Yes.

A. We received some other scratchers before we received the ones illustrated here. The scratchers that I [1822-177] am referring to, that were received prior to the ones illustrated in Figures 14, 18 and 26 had wires with sharp ends, and when we ran these scratchers and moved the casing and the scratchers the sharp wires cut the canvas and let the mud flow out all over the ground, and that test, of course, had to be abandoned.

Q.148: Did you receive any other scratchers other than the ones with the sharp wire ends and the ones as illustrated in these respective photographs, which are the figures of the report of Exhibit L, that you recall?

A. I don't recall any other scratchers.

Q.149: You state that you used mud in these demonstrations. Where was that mud obtained from?

A. These tests were located at the Central Mud

(Deposition of Philip H. Jones.)

Plant of the Union Oil Company at Dominguez. This plant supplied mud by pipeline to the drilling wells in Dominguez, in the Dominguez Field. Occasionally some of this mud was trucked away for use in wells other than those at Dominguez. We usually used that mud that was in current operation. We would simply take some of the supply that they were using for the drilling wells, put it in our little sump, and use that as the mud for the test operations.

Q.150: Then the mud that you used was, you might say, tapped right from the regular supply of the Union Oil Company which was used in actual drilling operations? [1822-178]

A. Yes. There were one or two cases in which the mud was modified, I believe, by—I believe we added carbonate to some of the mud, although I don't recall the details of it. That was when we were using the acid test.

Q.151: That is shown in the report?

A. Wherever the mud was altered it is shown in the report, and the tests on the mud used in each test are incorporated in the data supplied as part of the report.

Q.152: What does Figure 23 of Exhibit L for identification show?

A. This shows a spiral well bore cleaner and centralizer which was obtained from Mr. Hall.

Q.153: That is Jesse E. Hall?

A. I don't know his initials. I believe that is right, but I don't know his initials.

(Deposition of Philip H. Jones.)

Q.154: He was connected with the Cosco Manufacturing Company? A. That's right.

Q.155: That was the device which he submitted for use in these demonstrations; is that correct?

A. That is correct.

Mr. Lyon: At this time I would like to offer in evidence as Petitioner's Exhibit L the copy of the original report made by Jones and Berdine, identified by this witness, and I would like to have it understood that I may substitute [1822-179] for this original report a photostatic copy thereof, and substitute in that photostatic copy the photographs which have heretofore been identified as Exhibits F to K, inclusive, as the particular figures of the photostatic copies, so as to avoid duplication.

Mr. Scofield: That will be satisfactory, if I might just check over the photostat with the original report, and if you will make the original report available, should I wish to check it.

Mr. Lyon: The original report will be available here at any time.

Mr. Scofield: I have no objection. [1822-180]

* * *

Mr. Lyon: The Union Oil Company drilling practice has two records, the original records of which are present, one record being the tour report kept at the well by the driller, and which is a daily drilling report of the particular well. We have here the tour reports of three different wells for a particular day, or series of days of the drilling of those wells, one being Well No. 38 of the Rosecrans Field,

(Deposition of Philip H. Jones.)

the lease being referred to as the Rose Lease which, it is our understanding, is the Rosecrans Lease. The tour reports with which we are concerned on that well are the tour reports of March 1, 1940, the evening tour, and the tour report of the day tour of the same day, the tour report for the morning tour for the same day, that is, March 1, 1940, and the casing tally [1822-181] of the same well for March 1, 1940, seven-inch casing. There are four sheets of that casing tally, and the fourth sheet containing the remarks of the driller and of the petroleum engineer in charge of that well, in this case Mr. K. R. Evans. Of those sheets so identified in the original records we have photostats here which we would like to offer in evidence at this time as Petitioner's Exhibits O-1, O-2, O-3, O-4, O-5, O-6 and O-7, respectively, and we are supplying Applicant's counsel with a copy of the photostats thus prepared. In addition to this record thus identified concerning this Well No. 38, we have here the daily drilling report of the Union Oil Company for March 2, 1940, which is, as I understand it, a drilling report prepared in the office of the Union Oil Company from reports of drilling activities of the preceding day, prepared from reports phoned to the central office by the District Superintendent at each district, giving a summary of the preceding day's drilling operations of all wells being drilled on that day for the Union Oil Company in California, and that report is circulated to the interested parties in the Union Oil Company to keep them advised

(Deposition of Philip H. Jones.)

as to the drilling operations of the preceding day.

Q.156: That is correct, is it not?

A. I think that is correct.

Mr. Lyon: As to this Well No. 38, the same well, the [1822-182] drilling report of March 2, 1940, contains a report as to the Well No. 38 drilling operations for March 1, 1940, giving a summary of the operations of the March 1 operations, which I would offer in evidence at this time as Exhibit O-8, and I have likewise supplied a copy of this photostat to the Applicant's counsel.

(The documents referred to were marked by the Notary Public as Petitioner's Exhibits O-1 to O-8, respectively, and made a part of this deposition.)

Mr. Lyon: Secondly, the same records are present in this room with respect to the Rosecrans Lease Well No. 39 of the Rosecrans Field, beginning with the drilling record of March 15, 1940, for the evening tour of March 15, 1940, referred to as the PM tour, the day tour for the same day, and the morning tour of the same day, and also in a corresponding four-page record of the casing tally of March 15, 1940, of the seven-inch casing used in that well, together with the summary of remarks at the end signed by—it is not signed by any engineer. In the tour reports, however, the PM tour for March 15, 1940, is signed by K. R. Evans as the Petroleum Engineer and E. L. Russell as the driller. The day tour for that same day and well, there is no signature by the Petroleum Engineer, but the

(Deposition of Philip H. Jones.)

signature of the driller is of Joe Blanchard. In addition to that, we [1822-183] have the Union Oil Company daily drilling report records present for this Rosecrans No. 39 Well for March 16, 1940, and a photostatic copy of that drilling report, these records being the same original records as referred to hereinbefore, I mean, of the same character, and kept, as I understand it, in the same way, and with respect to this well I am handing counsel for Applicant photostatic copies of the pages identified, and I will ask that these pages be received in evidence and marked as Exhibits P-1 through P-7.

(The documents referred to were marked by the Notary Public as Petitioner's Exhibits P-1 to P-7, respectively, and made a part of this deposition.)

Mr. Lyon: With respect to the Dominguez Field, Call Lease, Callender Lease, Well No. 76, we have here the tour reports, the original tour reports for the three tours of April 7, 1940, being respectively the PM, day and AM tours, the PM Daylight and AM tours usually being referred to as the evening, the day and morning tour. In addition, with respect to that well, they have a casing tally report in three sheets for April 7, 1940, the tally report being again unsigned, the tour reports being respectively signed, the PM tour by A. L. Winney, the Daylight tour being signed by a driller whose signature I cannot read, being something [1822-183] like H-u-m-e-r-l-i-n-g, as near as I can read it, and the AM tour by L. A. Welch, all being drillers. I have

(Deposition of Philip H. Jones.)

also the original daily drilling report of the Union Oil Company with respect to this well for April 8, 1940, these records being kept and maintained in the same manner as the records previously and first identified, and I would like to offer in evidence these photostats of these records in place of the original records, as I have done in the other cases, as Petitioner's Exhibits Q-1 to -7, respectively, and ask that they be so marked. I am supplying Applicant's counsel with copies of the photostats so offered in evidence.

(The documents referred to were marked by the Notary Public as Petitioner's Exhibits Q-1 to Q-7, respectively, and made a part of this deposition.)

Mr. Lyon: It is understood that you are willing to accept the photostats in the place of the originals, first?

Mr. Scofield: No difficulty about that.

Mr. Lyon: Secondly, you are willing to accept these as original records of the Union Oil Company kept in the regular course of business as of the date and times stated?

Mr. Scofield: We are willing to stipulate that.

Mr. Lyon: Without further proof? [1822-184]

Mr. Scofield: That is right.

Mr. Lyon: And you are willing to accept the offer in evidence, subject to correction of any of the entries on any of these reports if any error appears?

Mr. Scofield: That is right, that is agreed to. We would like to reserve any objection until we have

(Deposition of Philip H. Jones.)

an opportunity to look through the photostats and see what they stand for.

Q.157: (By Mr. Lyon): Mr. Jones, you have stated to me that you made certain errors in your testimony that you gave earlier, and that you would like to correct those errors. You have not told me what the errors are, but go ahead and make your corrections.

A. First, I said I didn't know when I had retired, it was either 1948 or '49. I thought about it a little bit, and remembered I retired on June 1, 1949.

Second, I referred to an error in the paper, and I believe I said——

Q.158: You mean Exhibit L for identification?

A. Exhibit L for identification. I believe I said that a velocity of 25 feet per minute should have been twelve and a half feet per minute. I find that the figure that I thought in error was 30 feet per minute instead of 25 feet per minute, for I believe the 30 feet per minute in the middle of Page 7 should be twelve and a half feet per [1822-185] minute.

Q.159: That is Page 7 of the printed report you have got there?

A. The printed report. I don't know that that corresponds to the one in Exhibit L, "Mud Cake Removal by Acid Treatment."

Q.160: The error that you refer to appears under "Mud Cake Removal by Acid Treatment," 30 feet per minute, appears upon Page 12, the 30 feet you say is an error, in Exhibit L for identifica-

(Deposition of Philip H. Jones.)

tion, at Page 12, the fifth line from the bottom. You say that "30" should read, "twelve and a half"?

A. I believe it should be twelve and a half. I am not absolutely certain of it, but I believe it should be twelve and a half. Then I also said that after the cement was placed in the test wells that the blocks or the test wells were permitted to stand for 24 hours. I find, in rereading the report, that the report says that they stood for 48 hours before removal. These errors are, I believe, of no consequence, but they should be corrected.

Q.161: Referring to Exhibit J, which is a photographic reproduction of Figure 27 of Exhibit L, and particularly to the left-hand column, or to all three columns, will you state for the record just what these three columns show, fully?

A. As a matter of fact, there are four columns, [1822-186] four test wells shown in part. Up in the upper left corner of the print there is just a small section of a pipe which is not pertinent to the report, but it is there. There are three columns that are illustrated for the purposes of the report. The left-hand column——

Mr. Scofield: Are you referring now to the one that is just shown in part?

The Witness: I am not referring to the one shown in part. I am disregarding from now on the one shown in part in the upper left-hand corner, and will consider only the three major columns.

The left-hand one of the three in question shows

(Deposition of Philip H. Jones.)

the effects of removal of mud cake by the spiral wire wall scratcher.

Q.162: (By Mr. Lyon): Just let me stop you right there. Do you know where that word "spiral" came from?

A. No, I don't know where it came from. It refers—may I have the exhibit, please—not that one—I mean the report. It refers to the scratcher illustrated by Figure 26.

Mr. Scofield: Exhibit I.

Q.163: (By Mr. Lyon): Yes, it is Exhibit I.

A. Yes, Exhibit I, Figure 26. You will observe that the upper portion of this column is greater in diameter than the lower portion, and it should be borne in mind [1822-187] that the material photographed and that we are looking at here is the cement that was placed in the well. The mud cake has been removed, so that if the mud cake had been removed completely the cement would have filled the canvas bags completely, and the diameter of the cement column would have been substantially the same as the inside diameter of the canvas bags. In the upper portion of this left-hand column covering the spiral wire wall scratcher operation the cement column almost completely filled the annulus between the pipe and the canvas. The lines, the vertical lines in this portion of the block are places where the ends of the wires did not remove completely mud, where there was a small amount of mud. Thus a small amount of mud cake was left on the wall of the canvas, and the cement could not

(Deposition of Philip H. Jones.)

completely fill this space. You will observe a break in this column at a point approximately the center of the picture vertically. Below this break there was no mud cake removal by the spiral scratcher, because the scratcher in its vertical movement did not traverse this section of the pipe. Here we find that the diameter of this remaining cement column is smaller than the diameter of the column where the scratcher had operated, the difference being due primarily to the mud cake which was laid down on the wall of the canvas, and which was [1822-188] not displaced by the cement in the region where the scratcher did not operate. The columns, the two columns——

Mr. Scofield: Before you go on with these, Mr. Jones, won't you indicate whether the canvas bag is shown in that column?

The Witness: The remains of the canvas bag show in the bottom of the left-hand column. The canvas was slit.

Q.164: (By Mr. Lyon): Just take a pen and mark the word "canvas."

A. May I mark it? That will simplify it greatly. I will put an arrow to that point and put "canvas." Shall I initial that?

Q.165: Yes, that is all right.

A. The two columns to the right represent cement laid down after the use of acid. It is obvious from these pictures that the acid had removed the mud cake almost completely, and that the cement had made direct contact with the canvas bags.

(Deposition of Philip H. Jones.)

Q.166: The canvas bags have been removed from the two right-hand columns?

A. Yes, the canvas bags had been removed from the two right-hand columns, from all the columns.

Q.167: You stated in your answer that the vertical lines in the left-hand column were the lines traced by the ends of the wires, and indicated the amount of mud left [1822-189] inside of the cylindrical bag. How do you account for those lines being vertical or straight lines?

A. I think they show rather conclusively that during the vertical motion of the scratchers they did not rotate on the casing, certainly not in the major portion of the travel.

Q.168: There are breaks in those lines at the two points marked "Barkis" and "Barkis 2." Will you explain what those indicate?

A. "Barkis" and ——

Q.169: "Barkis 2."

A. Oh, "Barkis" and "Barkis 2," I see what you mean. "Barkis" is the lower end and "Barkis 2"—I don't believe I understand your question.

Q.170: The lines are not straight at those points. Can you explain that. There is a break in the vertical lines.

Mr. Subkow: Objection, that is an assumption.

Q.171: (By Mr. Lyon): In the first place, was there more than one scratcher used in this test?

A. There was. I believe there were two scratchers used in this test. I would have to check, though, to be absolutely certain of that.

(Deposition of Philip H. Jones.)

Q.172: Will you do so?

A. In this test there were two of the so-called spiral scratchers. In the upper—— [1822-190]

Mr. Scofield: Won't you indicate what you are referring to, Mr. Jones, on the record there, so that it will appear on the typewritten record?

The Witness: I don't understand.

Mr. Lyon: He was referring to the tabulated chart, which is a part of Exhibit L.

The Witness: Yes, there is a table there, and it is "Table 1 Continued," and in Run No. 8, Test Well No. 1 or—Test Well No. 2, under the heading "Devices on Casing" is listed "Wire Wall Scratchers (Figure 26) 36 inches and 72 inches above shoe." That indicates that there were two scratchers on the casing for this test, and that they were located as shown.

Mr. Scofield: What is the table title, "Summary of Equipment and Operating Data"?

The Witness: The title is "Summary of Equipment and Operating Data Pertinent to Cementing of Test Wells."

Q.173: (By Mr. Lyon): You took these pictures, didn't you? A. Yes.

Q.174: In the left-hand column as shown in Figure 27, Exhibit J, there is a place from the bottom of the column upward—and I take it it is the bottom of the column that is at the base of Figure 27—— A. That is correct.

(Deposition of Philip H. Jones.)

Q.175: ——in which the mud was not removed to a point? [1822-191] A. That is right.

Q.176: What point is that?

A. That is the point that is marked as "Barkis" on Exhibit J, and that point represents the lowest point reached by the scratchers in the course of their up and down motion in the casing.

Q.177: The point "Barkis 2," what is that?

A. That, I believe, is the approximate point where the scratchers overlapped, that is, where in the course of their motion one scratcher would traverse an area—the lower scratcher would traverse an area or a distance such that it overlapped slightly the traverse of the upper scratcher.

Q.178: Isn't that likewise the point of the approximate lowest point of reaching of the upper scratcher? A. It is, approximately.

Q.179: You have testified that these scratchers rotated during this operation.

Mr. Subkow: I object to that as not being the testimony of this witness.

Q.180: (By Mr. Lyon): Did you so testify?

A. Yes, I testified that the evidence showed the scratchers had—the results of the tests showed the scratchers had rotated.

Q.181: Do these two points marked "Barkis" and "Barkis 2" indicate anything with respect to such rotation? [1822-192] A. Well, the——

Q.182: Let me ask you this: You have stated that the scratchers did rotate? A. Yes.

(Deposition of Philip H. Jones.)

Q.183: At what point during the vertical reciprocation of the scratchers did they rotate?

A. I believe they rotated at the point of reversal, that is, at the top of the stroke and at the bottom of the stroke, and I believe that the evidence that weighs heavily with me in believing that they—being relatively certain that the scratchers had rotated, is that the area of the canvas wall traversed by the ends of the wires, and thus removing the mud cake, is far greater than the area of the ends of the wires. If the scratchers had not rotated they would have cut grooves in the mud cake that would be approximately the same width as the wires, and the cement then would have filled these grooves, and we would have had a series of very thin ridges, which can be shown—there is an indication of such ridges at the bottom break, at the point marked "Barkis," indicating that there was only one traverse at that point. Now, each individual wire had to change its position with respect to the position it occupied in the preceding oscillation or motion in order to sweep away the mud cake, as indicated by the picture.

Q.184: Isn't sideways motion [1822-193] indicated——

Mr. Scofield: Can I have that last answer?

Mr. Lyon: Just one moment.

Q.185: State whether or not that sidewise motion you have just referred to is indicated by the break in the vertical lines at the points "Barkis" and "Barkis 2" in Exhibit J.

A. They are somewhat out of vertical. The

(Deposition of Philip H. Jones.)

lines are somewhat out of vertical at the bottom, indicating that there was some sloughing around as the pipe was being raised and lowered.

Q.186: That is, the wires changed their position at those points "Barkis" and "Barkis 2"?

Mr. Scofield: Objected to as grossly leading. Pardon me, can I have those two questions and answers read?

Mr. Lyon: Just a minute, there is an unfinished answer.

Q.187: Indicating that they changed their positions at the points "Barkis" and "Barkis 2," that is, the wires changed their position on the inside of the cylinder, the canvas cylinder?

Mr. Scofield: Same objection.

The Witness: As I said before, it is obvious to me that the wires did have to change their position at the bottoms and tops of the strokes with respect to the position that they occupied on the preceding stroke. That is further evidenced by the fact that there are fine lines shown on [1822-194] the surface of the cement.

Q.188: (By Mr. Lyon): Those fine lines——

Mr. Scofield: Wait just a minute. Can't we have the last three questions and answers read, please, so that I can hear them?

(The record was read as requested.)

Q.189: (By Mr. Lyon): In the left-hand column of Figure 27, Exhibit J, there are fine lines and there are coarse lines. Now, what is indicated by the two different characters of lines?

(Deposition of Philip H. Jones.)

A. I believe that each of those fine lines, and I am speaking of the grooves, the depressions, represent portions of mud that were not previously removed by the scratchers, and the areas that are completely out to the diameter of the canvas are areas where scratching was complete. Now, those scratching areas might also be considered as ridges in the cement. They don't show as clearly in the picture as the depressions, which represent the residual mud cake, but these ridges between the fine lines represent places where the ends of the wires removed the mud cake from the walls of the well. If you observe carefully the major ridge which lies just above the tip of the arrow leading to "Barkis" you will see that that major ridge has one, two, three, four—at least four minor ridges, indicating that the scratchers had occupied—that [1822-195] a wire had occupied four points there as it moved up and down, and that those four points where the wires had traveled, or the tips of the wires had traveled, are far closer together than the tips of the wires on the scratcher at rest, so that the scratcher necessarily had to traverse, the tips of the wires had to traverse different areas on the various strokes; in other words, the position of the wires had to change at the ends of the strokes and—is that clear?

Q.190: When the wires moved as you have indicated, did that mean that the collars had rotated on the pipe?

(Deposition of Philip H. Jones.)

A. I believe it is rather conclusive evidence that the collars had moved on the pipe.

Mr. Lyon: That is all. You may cross-examine.

(A short recess was here taken.)

Cross-Examination

By Mr. Scofield:

XQ1: Mr. Jones, would you put before you Exhibit L, and refer particularly to the photostat, I think it is a photostat, of a drawing which is marked Figure 1, which is along toward the latter part of the exhibit. The drawing is entitled "Detail of Test Well." A. Yes, sir.

XQ2: Now, in your explanation of the manner in which these tests were made, I am not sure that I understand, and I think maybe the Patent Office may have doubt about [1822-196] some of the things that are shown there. I notice that there seems to be an enlarged vessel attached to the top of the casing or what you have referred to as a perforated reinforced pipe, and this enlarged bowl or reservoir is marked "Overflow Basin, No. 8." Do you see that? A. Yes, sir.

XQ3: What was the purpose of that?

A. In circulating the fluid down through the three-inch pipe and up through the annulus between the outside of the three-inch pipe and the canvas, a considerable amount of fluid was involved. It would have spilled out of the top of the perforated pipe if some means had not been provided for col-

(Deposition of Philip H. Jones.)

lecting it and returning it. Also, if such means had not been provided, there would have been a great waste of fluid, and it would have made a mess, and it wouldn't properly have simulated the action in a well. This larger diameter bowl, called "Overflow Basin," merely collected the fluid that flowed out of the upper portion of the annulus between the three-inch pipe and the canvas bag, and which was returned to the suction pit of the circuiting pumps through the three-inch overflow pipe marked as No. 11.

XQ4: The overflow going out through the pipe marked "11"? A. Yes. [1822-197]

XQ5: Now, is there shown in Fig. 2 where that overflow was sent?

A. Let's see, yes. It shows that it could flow in two directions. It could either be returned to the mud tank or could be discarded to waste by opening the valve indicated.

XQ6: Fig. 2, as I understand it, is a schematic flow diagram of the entire setup of these test wells; is that correct?

A. It shows the basic flow diagram. I don't know that it is entirely complete. It shows what we were doing in general.

XQ7: Well, was this what you used when you gave your talk before the API?

A. Yes, I believe it was.

XQ8: Now, does this diagram show, I am referring to Fig. 2, how the mud came in, or from what source or through what line?

(Deposition of Philip H. Jones.)

A. Where we obtained the original supply? There is a line showing on the left-hand portion of this drawing at about the center of the page, entitled "From Mud Storage." That would indicate that mud from the Central Storage Plant could be introduced into the system at that point.

XQ9: Well, was the mud that was actually circulated through the wells obtained from the mud tank that is [1822-198] indicated there centrally of the figure?

A. The mud that was—the mud that was actually circulated through the test wells was obtained from that tank, and the mud in the tank in turn was obtained from the supply at the Central Mud Plant at Dominguez.

XQ10: Just to be sure that we know or understand the course of this mud, won't you follow the mud from the mud tank to one of these wells, and then stop as the mud enters the casing or the pipe which simulated the casing?

A. That will be a little difficult to do from the drawing. I can use words as well as I can here, and try to do it for you. We have a storage supply of mud indicated by the "Mud Tank." From the bottom of that tank a line is indicated as going out, and it has several possible courses. However, it will be observed that by the use of the indicated valves the mud can flow from the tank to the suction of a pump. The pump then can force the mud through a line indicated by arrows up through —this line rising in the picture between the "Ce-

(Deposition of Philip H. Jones.)

ment Slurry Tank" and the "Mud Tank," and it then can be directed down into the top of the three-inch test well, as indicated by the arrows.

XQ11: It could have been directed into any one or all three of the test wells; is that correct?

Mr. Lyon: Four.

XQ12: (By Mr. Scofield): Or four? [1822-199]

A. That's right.

XQ13: Any one or all four of the test wells?

A. There are many places it could be sent by proper manipulation of the valves.

XQ14: But I was inquiring about the mud that was introduced to the test wells.

A. Yes, it could go to each, to any one or all of the test wells.

XQ15: Will you refer to Fig. 1, and indicate through what pipe the mud entered the top of the three-inch pipe in the test well?

A. Will you repeat that question, please?

Mr. Scofield: Read it.

(The question was read by the reporter.)

The Witness: We have an arrow from Item 3, marked "Quick Opening Valves," and the mud would enter through the lower of these quick opening valves and go into the top of the three-inch pipe.

XQ16: (By Mr. Scofield): That same pipe that you have referred to seems to have a flexible hose attached to it, which is marked "By-Pass 5"; is that correct? A. Yes.

(Deposition of Philip H. Jones.)

XQ17: Now, is that the line through which the mud enters?

A. I think "5" is the—is not the line through which [1822-200] the mud enters. I believe the mud enters through "4," the "Hi-Pressure Hose."

XQ18: That is the pipe on the opposite side?

A. That's right.

XQ19: Which is marked "Hi-Pressure Hose"?

A. Yes, sir.

XQ20: Follow, if you will, the course of the mud through one of these wells while you are building up a mud cake on the inside of your canvas sack.

A. The mud would enter the system through the line indicated as "4," the "Hi-Pressure Hose," and go down through the cross, through the quick opening valve, one of the quick opening valves marked "3," through the indicated union and through the bell reducer, and then into the three-inch pipe, and pass down inside the three-inch pipe to the bottom of this pipe, which is indicated as the dotted portion, or dotted indication, I believe the bottom—it does say "nine inches." That would be the bottom of the three-inch pipe. The mud would then pass into the annulus between the outside of the pipe and the inside of the canvas bag, also, of course, filling the canvas bag below the bottom of the three-inch pipe. The mud would then rise in this annulus and pass out of the annulus at the top, which is indicated as being four inches below the top of the overflow basin. It would then pass into [1822-201] the overflow basin and be returned

(Deposition of Philip H. Jones.)

to the suction pit, where the mud pump would again pick it up and recirculate it.

XQ21: The report shows that mud was circulated in the manner you have indicated, and was deposited on the inside of the bag.

A. There was a mud cake deposit on the inside of the bag. The bag itself, the canvas bag, permitted the loss of water from the mud that is depositing a cake on the inside of the wall of the test well.

XQ22: That water that escaped from this mud slurry passed through the perforated reinforcing pipe, did it? A. Yes.

XQ23: Where did that water go to?

A. It just flowed onto the ground, down the pipe and onto the ground.

XQ24: It just went off onto the ground?

A. Yes, it was not reclaimed.

XQ25: How long was the mud circulated or what was the thickness of the mud cake that you would build up before you started these tests?

A. The mud cake was usually circulated for a period of about 30 minutes.

Mr. Lyon: You mean the mud, not the mud cake.

The Witness: Yes, the mud, thank you. The mud was circulated for a period of about 30 minutes, as I have [1822-202] indicated, and then the entire assembly was allowed to stand overnight, for about 18 hours before the operations were resumed.

(Deposition of Philip H. Jones.)

XQ26: (By Mr. Scofield): What depth or what thickness of mud cake would accumulate in that 30-minute period?

A. It varied considerably, depending on the nature of the mud, and whether the casing was centered in the well or whether it was not.

XQ27: If you are referring to the report——

A. I am referring to the report.

XQ28: ——just indicate the place, will you please, Jones?

A. The nature of the mud cake is indicated in this report by Figures 3 and 4, and then by the subsequent pictures of the cement blocks that we had, that we showed in all the subsequent pictures of the test blocks after cementing, but these mud cakes, as indicated here, varied from a quarter to a half an inch in thickness. They may have been somewhat thinner or somewhat thicker in some cases, because I haven't the whole picture here.

XQ29: In some of these tests was the three-inch pipe off-centered, as indicated in Figures 3 and 4?

A. Yes, that was done in some cases deliberately to show the effect of off-centering or channeling of the cement slurry. [1822-203]

XQ30: Now, you have indicated in your direct examination that the pipe, the three-inch pipe was reciprocated vertically, have you not?

A. Yes, in some of the tests.

XQ31: In some of the tests? A. Yes.

XQ32: In none of these figures that I see in the

(Deposition of Philip H. Jones.)

report is there any indication of how this was done. Won't you explain that?

A. Yes. If you will refer to Figure 1 you will note that there is a cross indicated in the pipe system at the top of the well. Screwed into the upper portion of this upper——

XQ33: Connection?

A. ——connection of this cross is a hook, which is indicated.

Mr. Lyon: It is an eye, not a hook, is it?

The Witness: It is an eye, I should say, not a hook, and it is called the "Hook for Rope Blocks." It is an eye.

XQ34: (By Mr. Scofield): Let us don't quibble about what it is.

A. It is marked No. 2. At any rate, it provided a means for attaching the lower of two blocks of a pulley system. The upper block was attached to a davit or some support member up above the hook at some distance, and when [1822-204] we were reciprocating the pipe up and down a man would merely stand on the ground with the end of the rope, and he would pull the rope and lift the three-inch pipe off its support, No. 6. It would rise, and then the weight of the pipe was such as to permit it to fall as he released the rope, and we timed the rate at which the motions were maintained to correspond with what we wanted.

XQ35: You are speaking in nautical terms, of which I heartily approve, and you have indicated that there was a davit here above this well to which

(Deposition of Philip H. Jones.)

you had attached two blocks and a tackle, and you raised and lowered the well in that fashion.

A. Yes, that is about the system used; in other words, we used a block and tackle to raise and lower.

XQ36: This davit is nothing more than just a hook, in other words?

A. I don't remember the exact details. It was a sky hook to hold——

Mr. Lyon: Just a sky hook.

The Witness: ——the upper end of the block above the apparatus, so that we could raise and lower it.

XQ37: (By Mr. Scofield): Was there a separate support for each one of these wells, or were the four wells reciprocated simultaneously from one block and tackle?

A. One well was provided with an independent means [1822-205] for raising and lowering it. They were not raised and lowered simultaneously.

XQ38: Did you personally take any part in actually running these tests? A. Yes.

XQ39: What part did you take, that is, what did you do in connection with these tests?

A. Well, you asked me a rather——

Mr. Lyon: Which test?

The Witness: ——difficult question to answer. I was present, supervising all of the operations during many of the tests. I was not present all the time while these tests were being carried out.

XQ40: (By Mr. Scofield): Did you manipulate

(Deposition of Philip H. Jones.)

the valves to let in the mud, and then close them when the mud operation was completed?

A. In some instances, I did, yes. In other instances I directed how they should be manipulated, and in other cases the manipulation and direction was in the hands of the other members of my staff there.

XQ41: Did you conduct any of these reciprocation operations, when the pipe was raised and lowered?

A. I don't remember specifically whether I did or not. I am under the impression that I did once. It was hard work, and I let the other fellow do it.

XQ42: Was Mr. Berdine present with you during these [1822-206] tests?

A. He was present almost all of the time. I don't remember exactly when he was there and when he wasn't, but his duties were to have immediate supervision of the operations.

XQ43: Who else did you have on this test work beside you two?

A. Well, I had at least one other engineer. I believe his name was Getchen, I think it is G-e-t-c-h-e-n, but I am not even certain of the name. Several inspectors participated. One man that I remember particularly was Clifford Donahoe.

XQ44: A Union Oil man?

A. They are all Union Oil men that I am now referring to, and then we were assisted in the operations by the operators of the mud plant. The man in charge of the mud plant at that time was, I be-

(Deposition of Philip H. Jones.)

lieve his name was Arthur Blankenship, and one of the other operators at the mud plant was named DeBuxton, and I don't recall the names of the other ones.

XQ45: I believe there is a man by the name of Winter, whose name is on the outside of this report. Was he there helping you?

A. Mr. Winter was one of the District Petroleum Engineers. His office was at Santa Fe Springs, and he was [1822-207] very much interested in these tests, and he was consulted frequently in the course of these tests, and he observed some of them, and he observed many, if not all, of the results, but he, as far as I know, never actually participated in the operations. He didn't turn the valves or pull the ropes or raise——

XQ46: He was around the tests from time to time as an observer? A. That's right.

XQ47: A man by the name of Sheldon, his name has come into this, too. Did he take any part, or did he witness any of these tests, and who was he?

A. Dean Sheldon was a Petroleum Engineer for the Union Oil Company, and I don't recall exactly where his duties were. He was at Dominguez part of the time, and part of the time elsewhere. I believe, but I am not certain, that he witnessed some of these tests.

XQ48: Frank Boyd's name, too, has crept into the examination. Who was he?

A. Frank Boyd was the General Superinten-

(Deposition of Philip H. Jones.)

dent of Drilling for the Union Oil Company at that time.

XQ49: Did he witness any of these tests, or was he around the test apparatus during the time that these tests were being conducted?

A. He was there on some occasions, I [1822-208] can't remember how many, or what the duration of his visits was. I remember that he was there, yes.

XQ50: You have indicated that the three-inch pipe was reciprocated from above by this block and tackle arrangement. Evidently the overflow basin and the perforated reinforcing pipe was held stationary in some fashion, was it not? A. Yes.

XQ51: How was that done?

A. They were held against one of the 2,000 barrel mud tanks at the mud plant, and I don't remember exactly the detail. I don't remember how they were clamped, but they were held firmly to the tank, which acted then as a support for the apparatus, and also—the tank also acted as a support for the davit.

XQ52: What sort of a tank was this mud tank you have mentioned, rectangular tank or a circular tank?

A. It was a circular tank, steel tank. I believe it was of the conventional 2,000 barrel oil field type tank, and the four test wells were all attached to one tank. They were spaced, oh, several feet apart, so that if you climbed to the top of the tank you could go over and get at the tops of all of the test wells.

(Deposition of Philip H. Jones.)

XQ53: So that we can visualize this setup, how high was this tank? [1822-209]

A. I don't know. I am going to have to guess.

XQ54: Well, your best approximation.

A. I would say somewhere in the order of 15 to 20 feet, something like that.

XQ55: Now, were the test wells—pardon me.

A. I would say it was less than 20 feet, but I don't recall exactly.

XQ56: Were these test wells hung on the top rim of the tank, or were they attached to the side of the tank in some fashion?

A. As I said before, I don't remember exactly how they were attached to the tank.

XQ57: How were these davits or supports that held the block and tackle set up? Were they attached to the tank in any way?

A. I believe they were, but I am not absolutely certain they weren't attached to the overflow basin but, as I pointed out before, I just don't remember the details of this, of the davit.

XQ58: The mechanism for reciprocating the pipes, the separate pipes in the four individual wells is now shown on this report, with the exception of that top ring you have referred to?

A. Yes, sir.

XQ59: When this mud was circulated for the period, [1822-210] I believe you said of about 30 minutes, to obtain the mud cake on the inner surface of the cement bag, were the appliances or tools on the three-inch pipe? [1822-211]

* * *

(Deposition of Philip H. Jones.)

XQ60: (By Mr. Scofield): From your last answer, I have some question as to whether I understand how the mud cake was deposited. Won't you go through that explanation again?

A. When mud is placed in contact with a permeable wall or body of any sort, in almost all cases a loss of water will occur from the mud to the permeable member. The permeable member also has to have porosity to accept the water that was thus forced out of the mud. As this water passes out of the mud a cake of mud is deposited on the wall of the permeable structure, and the rate of deposition is fast when the operation is started. When the mud first contacts a permeable wall mud cake deposition is very rapid, and it decreases with time. I have forgotten the exact rates at which the mud cake is deposited, but it is probably somewhat in the order of the square root of time.

XQ61: You haven't yet told me the manner in which this is deposited. I understand the mud slurry was [1822-212] circulated through for 30 minutes? A. Yes.

XQ62: And then permitted to stand for 48 hours?

A. I believe that your question is not quite correct. I believe that I said that the mud was circulated for about 30 minutes, and then allowed to stand for about 18 hours.

XQ63: Was the mud permitted to stand in the perforated pipe during that time? A. Yes.

XQ64: There wasn't any added?

(Deposition of Philip H. Jones.)

A. There was no mud added. I might point out that as a result of the mud cake deposition there was some loss of water during the standing interval, and we observed that there was necessarily a reduction in level of the mud in the annulus between the pipe and the walls of the hole. That wasn't very great, but there was some reduction in level, because the mud cake was being deposited during the standing period.

XQ65: At the end of the 18-hour period the mud cake had been deposited?

A. Most of it had been deposited, yes.

XQ66: What was the thickness of the mud cake at that time?

A. Well, we never measured it at that particular time, because there were subsequent operations. There was [1822-213] recirculation of the mud for a short period of time when the operations were resumed, and there was a further deposition of mud cake during those subsequent operations. It was probably very, very small, the additions were probably very small, and the observations made when the apparatus was disassembled and the canvas bag removed and the mud cakes measured, the cakes at that time were probably almost identical with the cakes that were present at the end of the 18 hours' standing period.

XQ67: Now, assuming you were going to run a test on either the B & W scratchers or the Cosco centralizers, would those tools be on the three-inch pipe during that mud circulation and while it was

(Deposition of Philip H. Jones.)

standing the 18 hours? A. Yes.

XQ68: It would? A. Yes.

XQ69: Now, we have got the mud deposited. Before I get to that, I would like to have you explain, if you will, the purpose of the "supporting plate," which I believe is numbered "6" in Fig. 1.

A. That drawing is not very clear at that point, that is, referring to Figure 1.

XQ70: Yes.

A. The supporting plate was held in place by 3 three-quarter-inch rods indicated by No. "7," which were [1822-214] welded to the top of the seven-inch casing.

XQ71: There designated as the "perforated reinforcing pipe"?

A. The perforated reinforcing pipe was discontinued at a short distance below the bottom of the overflow pipe, and the pipe above that point was not perforated, that is, the section of pipe inside the overflow basin was not perforated. These support rods were welded to this section of the seven-inch pipe, and the support plate itself consisted essentially of a ring of steel with a hole in the center which was larger in diameter than the three-inch pipe, but smaller in diameter than the bell indicated there. Thus this support plate would hold up the three-inch pipe and all the attached apparatus, circulating control apparatus, pulleys, and so on, when it was not being held by the davits, by the davit and pulley system. In other words,

(Deposition of Philip H. Jones.)

during the period of standing the pipe rested on this support plate. It was not attached to it in any way. Is that clear?

XQ.72: Yes, except that I would like to know whether or not there was any connection whatsoever between this support plate and the standard which held this overflow basin. As I understood from your previous answers, the overflow basin and the perforated reinforcing pipe were stationary during all this reciprocation? [1822-215] A. Yes.

XQ.73: Now, was it through a connection to this supporting plate, or was the overflow basin itself supported in some fashion?

A. I don't believe I understand your question. May I try to describe it again?

XQ.74: Yes, go ahead.

A. I am afraid I will have to use almost the same words I did before.

XQ.75: I think I understand the purpose of the supporting plate, which is merely a rest for the top of the three-inch pipe.

A. It holds the three-inch pipe up, yes.

XQ.76: But what I am trying to get is where is there shown here, or how was this stationary arrangement, which is the overflow basin and reinforcing pipe, carried or supported? There is no indication of it in any of these drawings, and I was interested to know how they were set up or supported.

A. Now, the reinforced perforated pipe, as I believe I pointed out previously, terminated about

(Deposition of Philip H. Jones.)

six inches below the bottom of the overflow basin. Above that point the pipe was not perforated, and it was possible to remove the perforated pipe from the solid portion of the pipe by the bolts indicated. The portion of the seven-inch i.d. [1822-216] steel pipe inside the overflow basin was also not perforated, and these supports for the support ring were welded to the upper portion of this section of seven-inch i.d. steel pipe. The upper portions of these supports, in turn, were welded to the support ring, thus the support ring was a substantially fixed member of the upper assembly, consisting of the overflow basin and the seven-inch i.d. steel pipe, indicated by number "12."

XQ.77: Maybe we can get at it this way: Did these seven-inch perforated reinforcing pipes rest on the ground?

A. I believe that they did touch the ground and—yes, I am sure that they were touching the ground, the bottoms were on the ground.

XQ.78: Resting on the ground?

A. And the ground supported most of their weight. They were prevented from tipping over and falling outward by the apparatus being attached at or near the top to the upper portion of the tank, either the rim of the tank or the roof.

* * *

XQ.79: (By Mr. Scofield): We had gotten to a point, Mr. Jones, I believe, where the mud cake is now adhering to the [1822-217] inside of the

(Deposition of Philip H. Jones.)

canvas bag after the 18-hour standing time, and, as I recall your testimony, the tool or the scratchers that were going to be tested would be on the pipe, the three-inch pipe; is that correct?

A. Any apparatus that was to be tested was on the bottom, but placed on the three-inch pipe before mud circulation was started, and it remained on there throughout the standing period, just standing quiet.

XQ.80: As I recall, when you tested the scratchers shown in Fig. 26, which I believe is shown in our photographic exhibit, Exhibit I, you had two scratchers on the pipe?

A. Let me check back again. Yes, I believe there were two scratchers on that pipe. I believe I pointed that out, that it was on the second page of Table 1.

XQ.81: Starting at the point when the standing time, that is, this period of 18 hours, had elapsed, and you were about ready to make your test, would you carry me through the operation during which the cement column or cement billet was formed?

A. Well, the circulation of mud down through the three-inch pipe and up the annulus was resumed and continued for a definite length of time. It says in the report about 20 minutes, and then the circulation of mud was—the mud in circulation was replaced by other fluids that [1822-218] were involved in whatever test procedure had been determined upon. In some cases water was circulated following the mud, and in other cases water was not circulated at all, but cement was circulated directly behind the

(Deposition of Philip H. Jones.)

mud. When the water was used, I believe in almost—all cases that I think of, the cement was circulated following water, where it was used.

XQ.82: What was the purpose of circulating the water? A. Let me continue with the answer.

XQ.83: Pardon me.

A. In other cases acid, an acid solution was circulated before the cement was applied. I believe you will find that the details of the operations are set forth in this report No. L, Exhibit L, so that you can find out what was done in each test. Now, then, I am sorry I interrupted you. What was your next question?

XQ.84: What was the purpose of circulating water after the mud had been formed?

A. We were attempting to determine the effects of various field practices on the bond between cement and formation, and some people advocated the circulation of water ahead of the cement, that is, there would be a period of water circulation between the circulation of cement and mud. [1822-219]

XQ.85: That was advocated by some of the companies actually in field operations?

A. It was advocated by some engineers. I don't know who advocated it. It was one of the practices we wanted to investigate.

XQ.86: That was the reason for their doing it in these test operations?

A. Yes. We were attempting to simulate the conditions that would prevail if water was circulated, and make comparisons between the results that

(Deposition of Philip H. Jones.)

would obtain while they were circulating water—following the circulation of water, and compare them with the results when no water was circulated.

XQ.87: Now, go ahead and explain, if you will, how this cement column was formed, taking the place of the mud cake, if it did, in any one of these operations. You can choose, if you like, this operation that was performed with the B & W scratcher, Fig. 26, which I believe is Exhibit I, or any of the others that you care to take, but just describe the replacement or the forming of the cement column, and how the mud was deposited, or how the mud cake was deposited all during the formation of that column. Now, up to this time I understand the pipe has not been worked at all.

A. The pipe was not worked at all. The pipe and any apparatus that it might have attached to it rested [1822-220] without motion throughout the first mud circulation period, and throughout the standing period.

XQ.88: I want to be sure of this, too. As I understand it, all of these three-inch pipes were supported merely on one line from above in these different canvas sacks for four different wells?

A. During the period of standing the support—the weight of the pipe and the valve, and so on, that were attached thereto were supported by the support plate which we have discussed before. Only during the actual manipulation of the pipe as a part of the test when such manipulation was done—there were some tests in which there was no manipu-

(Deposition of Philip H. Jones.)

lation—only during those periods was the weight of the pipe, three-inch pipe and the attendant apparatus supported by the pulley system.

XQ.89: During that period when it was supported by the pulley system it hung as a pendulum in this canvas bag?

A. Well, it was guided at the top by the support plate. There was a—remember that that support plate consisted of a ring of steel that was slightly larger in diameter than the three-inch pipe. It would thus serve as a guide to center the upper part of the —the upper end of the three-inch pipe fairly well. The lower end of the pipe, its motion would be a function of the position of the whole assembly, so that gravity might pull it over, or it was [1822-221] influenced by whatever apparatus might have been on the bottom of the pipe.

XQ.90: Insofar as lateral movement, then, it was guided by this ring support at the top?

A. I don't know what you mean by "lateral movement." You mean——

XQ.91: I mean sidewise movement in the cement sack.

A. At the top it was guided by the support plates.

XQ.92: And insofar as rotary movement was concerned, the three-inch pipe was free to rotate on this single line supported from the top?

A. Yes, except for any interference that might occur as the result of the resistance to motion of the hose connections and the other apparatus up there.

(Deposition of Philip H. Jones.)

XQ.93: Was there any resistance from that source?

A. I don't know what the resistance was. There certainly was some, but its magnitude I could not even guess.

XQ.94: Go ahead, if you will, and describe the formation of these concrete or these cement billets after the mud cake had been formed.

A. After the mud cake had been formed and the circulation of mud had been resumed, and any other preliminary treatments had been applied, a cement slurry was pumped through the casing, into the three-inch pipe and [1822-222] up the annulus in much the same way as the mud had been, except that the overflow of extra cement was not returned to the pit. It was wasted, so that it was not actually a circulation of the cement slurry. We had a tank, as you will observe from the drawings, and that tank was filled, or a supply of cement slurry was prepared in that tank before, immediately before the cementing operation was carried on, and the pump merely took suction from that tank, and when that supply was exhausted, why, that completed the actual cementing operation.

XQ.95: Now, you haven't told me how the mud cake was removed and how the cement replaced it, if it did.

A. That was one of the major things we were trying to determine, and it was the subject matter of a large portion of this report, and——

(Deposition of Philip H. Jones.)

Mr. Lyon: By "this report," you mean Exhibit L?

The Witness: Exhibit L. I am afraid that if I try to give you a comprehensive picture of what happened and how it was done I would almost have to read the whole report to you.

XQ.96. (By Mr. Scofield): I do not want you to do that, but I want to be sure that I understand just how that cement column was formed, and maybe I can just question you on it, and you can tell us whether my understanding is correct or incorrect. [1822-223] A. O.K., go ahead.

XQ.97: Now, you are beginning to charge this cement slurry to the three-inch casing?

A. Yes.

XQ.98: At that time, as I understand it, you began reciprocating the three-inch casing; is that correct? A. In——

XQ.99: I am limiting my questions, so that you can limit your answers, to the use of any one of these scratchers, the B & W scratchers.

A. Well, let's see if we don't bring that out in the report here. All right, will you repeat that question, please.

(The question was read by the reporter.)

The Witness: The data here indicates that in all the tests with the scratchers the casing was reciprocated while the cement was being [1822-224] placed.

* * *

(Deposition of Philip H. Jones.)

XQ.101: (By Mr. Scofield): Then I will ask Mr. Jones then to proceed and describe just how the cement was placed in these sacks during the test operation. [1822-225]

* * *

The Witness: What I was doing, in taking this time, was to try to find a place in the report where this operation was described, and I believe that there are several places in the report in question where it was described. I believe the question was to ask me to describe the deposition of the cement block in the well?

XQ.102: (By Mr. Scofield): Yes, that is correct.

A. After the period of quiescent standing, the circulation of mud was resumed, as was previously pointed out, as I previously pointed out, in most cases about 20 minutes, and during this interval, in most cases in which devices for mechanical removal of the mud cake were applied, and in other cases also—in many other cases, the three-inch pipe was raised and lowered continuously, that is, during this recirculation period of approximately 20 [1822-226] minutes, at which time the circulation of cement was started, or of water, as the case might be, and the water circulation would in turn be followed by the circulation—I am not using that term "circulation" when applied to cement as meaning that the cement was recirculated through the well. It was merely passed through once. The cement slurry was then pumped into the well in the way that I pre-

(Deposition of Philip H. Jones.)

viously described, which I believe you understand, and when the last of this cement had been pumped into the well the movement of the casing was stopped, where such movement was being used, and the entire assembly allowed to stand quiet for a period of about 48 hours.

XQ.103: What became of the mud?

A. The mud that was used during this 20 minutes' circulation period is what you have reference to?

XQ.104: I have reference to that and to the mud that was on the wall of the sack, of the canvas bag.

A. The canvas bag? Where the mud cake was removed the cake would then be carried upward with the flow of mud and water or cement as the case might be. It would overflow into the Overflow Basin and back through the overflow pipe, and where there was any possibility of contaminating the mud so as to make it unusable it would be discarded, and not returned to the circulating pit. The cement also was discarded, the excess cement that appeared at the [1822-227] overflow pipe.

XQ.105: Do I understand by your explanation that the mud cake on the wall of the sack was replaced by a coating or a layer of cement?

A. The cement slurry filled those spaces that were available to it, and set up in those spaces.

XQ.106: What was the fact?

A. Well, in many cases the mud cake was removed, the mud cake that had been deposited against the canvas sack, and the space that had been oc-

(Deposition of Philip H. Jones.)

cupied by the mud cake was filled with the cement slurry which set up, and which was subsequently examined to evaluate the operation of the apparatus.

XQ.107: Under the paragraph which is headed, "Mud Cake Removal by Casing Movement," in your report, you find that? A. I have it, yes.

XQ.108: At the beginning of the third paragraph it says, "The down-whirler shoes had stripped the mud cake from the canvas of the test wells up to points 48 inches above the normal position of the shoes."

Mr. Lyon: Where does it say that?

Mr. Scofield: The third paragraph.

XQ.109: What is the meaning of [1822-228] that?

* * *

XQ.110: What did I leave out?

A. "The down-whirler shoes had stripped the mud cake from the canvas walls of the test wells up to points 48 inches above the normal position of the shoes."

XQ.111: That is right.

A. By that I meant that the shoe—I meant the normal position of the shoe was the position of the shoe at rest, during the period of quiescence. Where the pipe was raised and lowered, carrying the shoe with it, of course the shoe would be carried above the point of its normal resting position by the distance that the pipe was moved, and in this particular reference I said that this maximum height

(Deposition of Philip H. Jones.)

was six inches, that this maximum height of removal of cement was six inches——

Mr. Lyon: Cement or mud?

The Witness: Removal of the mud cake was six inches above the maximum height to which the shoe had been raised during the reciprocating motion.

XQ.112: (By Mr. Scofield): Was that due to the turbulence caused by the shoe?

Mr. Lyon: I think that is thoroughly answered in the paragraph itself.

The Witness: That was my opinion, that the turbulence had removed the mud cake and permitted the cement to take its [1822-229] place.

* * *

XQ.113: (By Mr. Scofield): As I recall your testimony, B & W furnished the Union Oil Company with some scratchers for tests?

A. Yes.

XQ.114: For these tests that we are not considering? [1822-230]

A. They furnished some scratchers for these test operations.

XQ.115: How many were furnished?

A. I don't know that I can give you that answer, because I am not sure of it. It is my recollection that we had to reclaim some of the scratchers for subsequent tests. They were modified to correspond with the requirements of subsequent tests, but I am not sure how many scratchers were supplied and how many we modified. [1822-231]

* * *

(Deposition of Philip H. Jones.)

XQ.121: (By Mr. Scofield): That is what I want you to do now, is describe for me the first test you made on the scratchers that were furnished you, and the one that tore the canvas bag. [1822-232]

* * *

A. As I recall it, the operation was substantially as I have described the operation with these scratchers in which the scratcher or scratchers were placed on the three-inch pipe.

XQ.123: Two scratchers?

A. I don't know whether there were two or not. I believe there were, but I am not certain of that.

XQ.124: Were they placed 36 inches from the bottom and 72 inches from the bottom?

A. I don't recall what the spacing was if there were more than one. They were placed on the—if there were two they were placed—if there was one it was placed on the three-inch pipe between stops, as illustrated by Figure 18.

XQ.125: Do you recall the length of the wires in those particular scratchers? I am speaking of the first ones.

A. The first one that at some time during the test operations perforated the canvas walls? No, I can't tell you exactly how long they were.

XQ.126: Do you recall whether the diameter of the scratcher or scratchers was the same or greater than the [1822-233] diameter of the canvas bag?

Mr. Lyon: I presume that is also the first one?

The Witness: If you are referring to the first one,

(Deposition of Philip H. Jones.)

I am sure that the outside diameter of the whiskers, the wires on the scratchers when at rest was greater than the inside diameter of the canvas bag, but I don't know what the difference was.

XQ.127: (By Mr. Scofield): Do you recall whether the wires of the first scratchers extended radially from the collar?

A. I can't be sure.

XQ.128: What is your recollection with respect to when this perforation or tearing of the bag took place, and I am again referring, and all these questions, unless I indicate otherwise, have to do with the first scratchers.

A. I don't remember when it occurred.

XQ.129: You don't remember whether it had been reciprocated once or just a half a reciprocation or twice, or more?

A. I don't recall how the failure occurred. It might even have occurred when the apparatus was put in the pipe, and showed up when the mud was first put in. I just don't remember.

XQ.130: Is your recollection pretty clear with regard to these tests, Mr. Jones?

A. Fairly so. I might point out that I was not [1822-234] present all the time, and I don't claim to have the most marvelous memory in the world. I can forget, and have undoubtedly forgotten many of the details. I can't account for what my memory does.

XQ.132: They were completed at least 13 years and two months ago, were they not?

(Deposition of Philip H. Jones.)

A. Oh, something like that. Let's see, today is 1953; in that order, 13 years.

* * *

XQ.134: And you know that all of these scratcher tests were completed before the end of November, don't you?

A. I am not just sure when the last of these scratcher tests was completed.

XQ.135: You went to college with Mr. Kenneth Wright, did you not?

A. I believe so. I frankly don't remember him. He was in a class or two behind me, and I understand that when I was a teaching assistant in the chemistry department [1822-235] he was one of the freshmen in that class. Frankly, I don't remember him as of that time.

XQ.136: Let me test your recollection another way. You are a fraternity man at Stanford?

A. I wasn't a house fraternity man. I was a member of Phi Lambda Upsilon, which is an honorary society, and Alpha Chi Sigma, which is a professional society, and which has houses on some campuses, but had no house at Stanford.

XQ.137: Each one of those fraternities had a badge or a pin? A. Yes.

XQ.138: Did you have a badge of each one of the fraternities? A. I had such a badge.

XQ.139: On that badge or either of the badges was your name printed?

(Deposition of Philip H. Jones.)

A. I believe that my initials were engraved on the backs of these badges.

XQ.140: Do you recall having lost one of those badges?

A. I believe I did. I believe that—I believe that Mr. Hall returned it to me, but, frankly, I wouldn't say when.

XQ.141: Do you remember where you lost it?

A. No, I don't. [1822-237] No, I don't remember where I lost it or when.

XQ.143: To get back to these first scratchers, you have indicated that the wires or diameters of the scratchers were somewhat greater than the diameter of the bag, the canvas bag; did you not?

A. Yes.

XQ.144: And that they were not usable in the test because they had perforated the bag?

A. Yes, that is, the first scratchers.

XQ.145: Yes. Do you remember how you mounted that first scratcher or those first scratchers, if there were two, on the three-inch pipe?

A. I believe they were mounted as I have indicated.

XQ.146: How was that?

A. As illustrated by Figure 18 of Exhibit L.

XQ.147: That is, between——

A. Confining rings.

XQ.148: ——confining rings? A. Yes.

XQ.149: Were you present when the first scratchers tore the canvas bag?

A. I am not certain whether or not I was.

(Deposition of Philip H. Jones.)

XQ.150: What was done then, do you know?

A. From my direct memory of the events that followed, I can't tell you exactly what we did thereafter. [1822-238] I can tell you what I believe was done and that is the apparatus was disassembled and the test procedure was—the testing program was continued without the use of the scratchers.

XQ.151: Does this report indicate anywhere what was done? A. No, it doesn't.

XQ.152: Does any report that you made to the Union Oil Company indicate?

A. Well, I can't answer that question. It might have appeared in some of the written reports by some of my men. It might have appeared in other reports that—I would have to go back and examine the reports. I just don't know. We regarded it as of no consequence at that time. We were after practical results, and were not concerned with the great detail that is now required in the course of this lawsuit.

XQ.153: Were other reports made to the Union Oil Company other than the reports that were made by you, from men who were working on this test apparatus?

Mr. Lyon: I will have to object to that, and ask for clarification as to what he means by the "Union Oil Company." Obviously, it is a well-known fact that certain reports were made. Applicant's counsel has inspected them. Whether they were made to the Union Oil Company or the reports were made to this division of the Union Oil Company, or what you

(Deposition of Philip H. Jones.)

mean by the Union Oil Company, I will [1822-239] have to ask for clarification.

Mr. Scofield: I won't quibble as to that, that is, if they were made to any division of the Union Oil Company.

XQ.154: My question is prompted merely by your previous answer that some of the other men of the group might have made reports, and I asked you were other reports made than yours to any division or to any individual of the Union Oil Company?

A. Other reports were made, yes. They went all the way from very informal reports to rather formal ones.

XQ.155: Who made those reports besides you and Berdine?

A. Some of the reports were made by the men working under my supervision to me, and they went into the records, I presume. I didn't trace them, I don't know what became of them, and Berdine and possibly Getchen participated in the writing of interim reports covering the progress of the work. I do not recall whether they were weekly reports or monthly reports.

XQ.156: Have you now any recollection that a report was made of the tearing of this canvas bag by the first Wright scratchers or the first B & W scratchers?

Mr. Lyon: What do you mean by "a report"? Just a moment, Mr. Jones. You mean a report in writing?

(Deposition of Philip H. Jones.)

XQ.157: (By Mr. Scofield): A written report.

A. I don't know whether or not one was prepared [1822-240] and, if so, by whom or to whom it went after it was prepared. I just don't know.

XQ.158: Did you discuss this matter with Mr. Wright after the happening, that is, the tearing of this bag?

A. I frankly don't remember what discussions occurred at that time in detail. I may or may not have. I will have to guess now. I can't specifically remember the nature of any such conversations. I presume that we did. It seems almost certain that we did. He was vitally concerned with the reports, I mean with the tests. His concern supplied them, and he was present during part of the tests. Whether or not he was present during this particular test, I don't remember.

XQ.159: Do you recall whether Mr. Barkis was present during this first test, when the first scratchers were used?

A. No, I don't recall. He may or may not have been present. As I pointed out before, it is possible I wasn't there when that failure occurred. I don't have a clear memory of the details.

XQ.160: Do you know sequentially what type of B & W scratcher was then tried after the first scratchers tore the canvas bags?

A. I believe I can look it up, and give you the information that is contained in here.

XQ.161: Can you tell from the report what was used [1822-241] next?

(Deposition of Philip H. Jones.)

A. I believe you can. I believe that these reports —this report, Table 1, lists the runs as Runs Nos. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, in the order in which they occurred. Now, I am not certain as to that, but I believe so. I believe that the order in which the Barkis and Wright scratchers were tested can be determined from this Table 1. It would indicate that the Figure 14 scratcher was tried first.

* * *

XQ.163: (By Mr. Scofield): In the test made on the Figure 14 scratcher it appears from your Table 1 that there were two, mounted at 36 inches and 72 inches above the shoe, was there not?

A. You have lost me for a minute. Yes, on Table 1, under "Devices on Casing," it says in Run 6, Test Well 3, wire wall scratchers, Fig. 14, 36 inches and 72 inches above the shoe, plain collar 122 inches above the shoe. [1822-242]

XQ.164: The pipe was reciprocated in that test 42 inches, so that there was six inches overlap; is that correct? A. Yes, that is correct.

XQ.165: I believe you indicated on your direct examination that the photograph Exhibit F, which is Fig. 14, does not show how this was mounted?

A. That is right.

XQ.166: And I believe you also indicated that that was held in place by a wedge of something, you said, that was put between the pipe and the collar behind; is that what your testimony was?

A. That is correct.

(Deposition of Philip H. Jones.)

XQ.167: How did you recollect that circumstance?

A. I can't account for the tricks of the human memory. I just don't know. I am very sure of that incident. I remember it very clearly. I remember that I tried to hold it in place with mud, and it was so loose it fell down, and I hunted around for a stick of wood, and believe I found a match stick, and it wouldn't hold it, and I finally found a stick of wood and stuck it in back of that collar, and held it in place while I photographed that. Why I remember that I don't know, but I do.

XQ.168: The wedge does not show in the photograph, Fig. 14? [1822-243]

A. No, it does not. It was in back of the pipe; in other words, it didn't show in the picture.

XQ.169: There is no explanation or description in the report that would indicate how this Figure 14 scratcher was mounted on the pipe?

A. I am reasonably certain there was no explanation of the mounting of this particular scratcher.

XQ.170: The cement column produced by these scratchers is shown in Figure 16, Exhibit K, is it not?

A. Yes, I think so. Let us just check just a moment. Yes.

XQ.171: Were both of those columns produced by the same type of scratchers?

A. Yes. I believe that the principal difference in the two tests was that in one of the tests water was circulated ahead of the cement slurry, and in

(Deposition of Philip H. Jones.)

the other no water was circulated ahead of the slurry. I think that was the principal difference between the two test wells or the two tests of this set of scratchers. One of the purposes was to see whether the water made any difference with this type of apparatus.

XQ.172: You have indicated previously that you did not recall how many scratchers were furnished by B & W, but certainly for these two tests there were four scratchers furnished, were [1822-244] there not?

A. There certainly were four, because we can see them right here, four of them in the picture.

XQ.173: Now, your observations with regard to the mechanical type scratchers has been rather general in the report. I would like to have you state for me now whether you think these scratchers which produced the columns in Figure 16 successfully removed the mud cake, and made what you would consider a good cement column.

A. It is my opinion that these two—that the scratchers in both these tests were effective in removing mud cake and producing a good bond between the cement and the wall of the hole.

XQ.174: Is there any indication in this report as to whether or not there was any mud cake left on the canvas bags in either of these tests made with this particular scratcher?

A. By that do you mean that: Was there a mud cake left on the canvas bag at points where the scratchers had not removed it?

(Deposition of Philip H. Jones.)

Q. What I mean is: Is there any indication in the report as to whether or not there was any mud cake left in the canvas bag after these two cement columns were formed, in any place, whether in streaks or whether there was any film, or is there any indication in the report as to whether there was any mud cake left when these cement columns were formed? [1822-245]

A. I believe that in the text somewhere reference is made to the action of these scratchers.

XQ.175. Look, if you will, under the heading, "Appearance of Cement Columns Above Regions Affected by Shoe Turbulence."

A. To what do you refer now?

XQ.176. Maybe it is under the heading of "Mud Cake Removal by Mechanical Devices."

A. Yes. Now, let's get—I was just examining that.

Mr. Subkow: The third paragraph.

XQ.177: (By Mr. Scofield): I think it is in the third paragraph. Perhaps that will facilitate this.

A. In the second paragraph of Page 9, the second sentence says, "Over their range of travel almost complete removal of mud cake was effected by the wire wall scratchers, and there was no evidence of fouling of the wires by mud or mud cake," and in this——

Mr. Lyon: Read on.

The Witness: In this text it says that, "No mud cake removal was obtained beyond the travel range

(Deposition of Philip H. Jones.)

of the scratchers, indicating that any turbulence that may have been induced was ineffective. The turbulence collars were of no value in removing mud cake." [1822-246]

* * *

XQ.180: Can you tell from the columns shown in Figure 14 whether these scratchers rotated on the pipe? [1822-247]

A. It is not very clear. However, there are ridges showing in a few places, which would so indicate but, as I say, I don't see anything in this picture that is particularly clear. It does not stand out.

XQ.181: Is there any evidence that appears from those two columns that shows that any one of the four scratchers rotated on the pipe?

A. Yes, I think there is some evidence, but I don't believe it is conclusive. I think that if you examined it in great detail you might find an indication of movement of the wires out of a uniform path of travel; in other words, there is some indication that they did not travel in the same path during each motion up and down.

XQ.182: Do you know why the columns were chopped out to expose the scratchers?

A. There were several reasons. We wished to see the position of the scratchers with respect to the cement billet which, in turn, would show the position of the scratchers with respect to any mud cake removed from the wall of the hole. I think that was

(Deposition of Philip H. Jones.)

the principal reason, and it also served the purpose of clearly identifying the individual pictures.

XQ.183: Is there any indication in your report why these columns were chopped out to expose the scratchers?

A. I would have to read the thing completely to [1822-248] tell you whether or not it was in there.

XQ.184: What is your recollection about that?

A. Well, I don't recall it. It may be in there. We can very easily determine it by reading the report.

XQ.185: We might glance through it and see.

* * *

The Witness: In this particular section of the report that we have just been examining, I don't see any specific reference to the act of chopping out the cement. There may be other references to such operations in the text of the report but, as I say, there is indirect evidence that the scratchers were exposed by some means, in that the statement is made that they had not been fouled. That certainly is not a direct statement that they have been chopped away, [1822-249] but it implies they had been exposed to view, and you could determine from that——

XQ.186: (By Mr. Scofield): Do you know how the scratchers were located in order to chop them out?

A. I am not certain of that. I believe that in some cases—in fact, I am sure that in some cases you could see the wires exposed at the surface of the

(Deposition of Philip H. Jones.)

cement, if you examined it carefully and washed the cement surface thoroughly. In other cases I believe you could not. If you will observe Figure 14, you will notice that in both the columns the upper chop marks occurred right at the scratchers, and in the left-hand column at the bottom there was considerable chopping above and below the scratcher, indicating we did not know exactly where it was, and that we probably were hunting for it in a chopping operation, and there is some indication that that was the case in the bottom chops of the right-hand column.

XQ.187: So it would appear that at least as to the lower scratchers there they did not come to the surface of the cement column?

A. Apparently that was the case. I can't be certain.

XQ.188: Do you think they came to the surface at the upper end, that is, the upper two?

A. I believe they did, but I wouldn't say for sure. [1822-250] I am sure that the scratchers, the diameters of the scratchers were slightly larger than the inside of the diameter of the canvas bag, and I would expect that you would find them protruding. As a matter of fact, I am certain that they did show in some cases.

XQ.189: How sure are you that the diameter of the scratcher was greater than the inside diameter of the bag?

A. I am reasonably certain that it was.

XQ.190: Does it appear in this report?

(Deposition of Philip H. Jones.)

A. I am not certain that it appears in the report. We will have to examine the report.

XQ.191: I wish you would, because I think that is a rather significant matter. Mr. Jones, you might look at the note below Figure 4.

A. There is your answer.

XQ.192: It says there, does it not, that the "outside diameter of scratcher is substantially the same as the inside diameter of test well"?

A. Yes, that is what it says there. I will see if I can find anything more in the text. There may be references to it in other places, I don't know. I don't find any reference in the text to the diameter of the scratchers that we are now referring to other than the one you pointed out to me. It is my recollection that they were slightly greater in diameter than the inside diameter [1822-251] of the casing. I have a recollection of some difficulty of getting them into the canvas bag, that they bound as they went in.

* * *

XQ.194: (By Mr. Scofield): Do you know, or do you recollect whether these four scratchers used in making the two columns shown in Fig. 16 were the original scratchers with the wires bent, or were they four new scratchers that were [1822-252] furnished?

A. I can't say. I don't recollect what the history of the scratchers was.

XQ.195: Do you know why they were bent in this fashion?

(Deposition of Philip H. Jones.)

A. Well, they were bent in this fashion, I believe, at the plant or place of business of Barkis and Wright, and why they bent them that way I guess they would have to tell you. I can tell you why I think they were bent that way.

XQ.196: You did not have anything to do with the design of these particular wires?

A. All of the apparatus described in this report in almost all cases was submitted to us by the various vendors and manufacturers, and in all cases we attempted to use the apparatus in a manner recommended and satisfactory to the people supplying the equipment, and in this particular case, why, I am sure that the devices as supplied us was in accordance with the ideas of Barkis and Wright.

XQ.197: On Figure 14, Exhibit K, the scratchers are shown partially chopped out. Do you know whether those scratchers were ever entirely removed from that three-inch casing?

A. I don't know. I am not certain of it. That has to be my answer. I can guess, but I am not certain. [1822-253]

XQ.198: Have you any recollection about it?

A. Not a very clear one. I am under the impression, let us say, that they were removed and used again, but I am not at all certain of that.

XQ.199: Did you people there at the test location attempt in any one of these tests to recover your three-inch pipe from the columns after they were made?

A. I remember that I was concerned with the

(Deposition of Philip H. Jones.)

cost of the operations, and the three-inch pipe constituted a very considerable item of the cost, and I don't now recall the details of our efforts to save this pipe and reuse it. I don't know how far we went in that effort. I am certain that ultimately I abandoned the idea, because it is my recollection that the time consumed, cost of reclaiming, getting the cement out of the inside of the pipe, and so on, was so great that the effort was not justified. It was cheaper to get pipe and discard the old pipe, but how much of it was reclaimed I don't remember.

XQ.200: There is no indication in this report that you made to the API or that was given before the API as to whether these things were chopped out or whether the pipe was recovered, is there?

A. I don't believe so.

XQ.201: There is no indication in the nine pages [1822-254] preceding the report in Exhibit L, which you made to the Union Oil Company, that this pipe was recovered?

A. Now, in order to answer you with certainty I would have to read all the nine pages. I will say, without reading the nine pages, that I don't recall any reference to reclamation of the pipe.

XQ.202: I could not find it, and if you find it overnight, why, you can so indicate tomorrow.

A. As I say, I don't recall any reference to it. [1822-255]

* * *

The Witness: I read this report over. I didn't have that Exhibit L, which contained the report to

(Deposition of Philip H. Jones.)

the Union Oil Company engineers proper. I didn't find anything about recovery of pipe in this report. However, I discovered some discrepancies or errors in my testimony, which I would like to correct at this time.

I believe that I either stated or implied that this support plate and assembly as shown in Figure 1, No. 6, of the report in question, was in use at all times throughout the entire test. I am reasonably certain that that was not the case; that that support mechanism was not used or was not in place, I don't know which—I think it was not in place—during some of the early runs. My present recollection is that the weight of the pipe, that is, the three-inch pipe, and attendant equipment during those early runs was supported by some sort of a rod that extended from the bottom of the three-inch pipe, or the shoe to the bottom of the test well, supporting the whole assembly above the bottom of the well by whatever distance we used, and that the centering and support plates—supporting plate was [1822-256] not present. You will note, for example, in Figure 5 that——

Cross-Examination

(Resumed)

By Mr. Scofield:

XQ.203: State what that is.

A. It shows the effect of off-centering casing, and also by reference to Table 1, and also Figure 4, which shows examples of off-centering casing, that

(Deposition of Philip H. Jones.)

the pipe was centered at the shoe by a spider, and that as you go up the pipe and test well the casing gradually drifted to the side, and at the top illustration—at the illustration shown in Figure 4, covering the position 120 inches above the shoe, that the casing was against—almost against the wall of the test well. That could not, of course, have been obtained if the centering action of the support plate had been operable.

XQ.204: Could that have been accomplished, that is, this off-centering you have explained, by off-centering this support plate at the top?

A. It might have been accomplished that way, but I don't believe it was. It is my present recollection that the hoisting mechanism and this support plate, and so on, were not installed during the first part of these runs. I can't be certain of that, but that is my present recollection. [1822-257]

XQ.205: Is this spider you have now made reference to in one of your previous answers shown in the report at any place?

A. It is not shown in the report, and I can't remember the nature of that spider. It was obviously some sort of a centering device.

XQ.206: Is it mentioned in the text?

A. I find no mention of it in the text.

Mr. Lyon: You are making a differentiation between text and table there?

The Witness: Yes. The table, however, shows that a spider was used. I believe it shows in the table.

(Deposition of Philip H. Jones.)

XQ.207: (By Mr. Scofield): I believe it does, too.

A. In Table 1, Run No. 2, under the heading, "Devices on Casing," it says, "Centering Device, Spider at Shoe." Now, as I say, I just don't remember the nature of that centering spider, and I don't know—I can't remember the nature of the support at the bottom. I have a distinct recollection that there was some such support.

XQ.208: How would the spider be mounted at the shoe?

A. As I say, I just don't remember the details of the spider or how it was mounted. Now, there is one other, at least one other error. In discussing Figure 27——

Mr. Lyon: Exhibit what?

The Witness: Exhibit J, I believe, that I either stated [1822-258] or implied that the point marked "Barkis" on the left-hand column represented the bottom point of travel of the scratchers. That is not correct. In this particular case the photograph was taken with the camera closest to the upper end of the pipes and cement columns, looking down toward the shoe, and I find in going over the report that quite a number of the photographs were taken in a direction looking toward the shoes, whereas, in other cases they were taken at the bottom looking up the shoes. The object was, of course, to bring out most clearly the results of the tests. In other words, by taking this picture this way, in this direc-

(Deposition of Philip H. Jones.)

tion, I was able to show the break between the point where mud cake had been removed and where it had not much more clearly than if I had taken it from the other direction. Then, in discussing Figure 16, Exhibit K, I believe that I said that there was no evidence, that I could find no evidence of rotation of the scratcher. I believe that there is rather conclusive evidence that the scratchers did rotate. If you refer to Figure 14 and also to the exposed portions of the scratcher in Figure 16, you will observe that the area of the wall of the hole swept by the ends of the U-shaped wires, scratcher wires, is less than the area, the entire area of the circumference. Thus, if the scratchers had not rotated we would have found—we would have left ridges of mud cake adhering to the walls of [1822-259] the hole corresponding with the places where the scratcher wires had not removed the mud cake. Whereas, the picture in Figure 16, Exhibit K, indicates that almost the entire area, or the entire area of the wall of the hole had been swept by the scratchers, which could only have occurred because of their rising and falling in a different position. I believe those are the only comments that I have now.

Mr. Lyon: So that the record might be clear on one point, can you tell from Figure 16, and do you have any recollection as to which end is closest to the camera, the top or the bottom end of the cement billets in that case?

A. I can't be sure. I am not sufficiently sure to have my opinion—right now I am not sufficiently

(Deposition of Philip H. Jones.)

sure. I haven't examined it in great enough detail to be sure of which direction the camera was pointed.

XQ.209: (By Mr. Scofield): Would the open end of the scratcher wires give you any help there, Jones?

A. Well, they might. I think that the picture was probably taken from the bottom, that is, looking up the pipe, and I am not sure of that.

Mr. Lyon: The camera end of the right-hand column that is closest to you, the right-hand column where there is an indication of irregularity of removal of mud, does that give you any clue?

The Witness: That might indicate that the picture was [1822-260] taken in the opposite direction from the one I just gave, in other words, that it was taken looking in the direction of the shoe, but I can't see enough there to be dead sure. As I say, I don't know.

Mr. Lyon: You just don't know?

The Witness: I just don't know.

* * *

XQ.210: (By Mr. Scofield): Mr. Jones, would you look at Figure 25 of the report, Exhibit L, and tell me whether or not the centering device shown there is the—— A. Figure?

XQ.211: Figure 25? A. Yes.

Mr. Lyon: Let me make a note right now. We have not rephotographed all of the photographs of Exhibit L. We are going to rephotograph the rest

(Deposition of Philip H. Jones.)

of them, according to the stipulation, so we are going to have to replace them all.

XQ.211: (By Mr. Scofield): State, if you will, whether or not the centering device shown there is the spider that you referred to this morning in one of your corrections. A. It is not.

XQ.212: It was some spider other than this device shown here? A. Yes, sir.

XQ.213: In making the corrections in your testimony [1822-261] this morning, if I understood one of the statements you made with respect to Figure 16—do you have that before you?

A. I have Figure 16 before me.

XQ.214: You indicated that the scratchers used in that test covered less than the area of the circumference, if I understood you?

Mr. Lyon: I think it is a misstatement.

The Witness: I used the "area" and "circumference" rather loosely.

XQ.215: (By Mr. Scofield): What was your statement again?

A. Would you mind reading the statement?

Mr. Scofield: Read what he said.

(Record read as requested.)

The Witness: In order to amplify and possibly clarify that statement, the circumference of the wall of the hole is greater than the sum of the length of wire in contact with the wall of the hole, and therefore any vertical motion of the scratcher without rotation of the scratcher would not have swept the

(Deposition of Philip H. Jones.)

entire wall of the hole over the distance traveled in the vertical motion of the pipe and scratcher. If the scratcher had not moved small ridges of mud cake would have been left on the wall of the hole corresponding with the spaces between the ends of the scratchers in contact with the wall of the hole. These ridges of mud cake would not have been filled with cement, and they would have [1822-262] appeared in Figure 16 as grooves. The fact that there are no significant grooves indicates conclusively that the scratchers had to move in order to sweep the mud cake off the wall of the hole almost completely, as the figure shows.

XQ.216: (By Mr. Scofield): Was it your testimony during direct examination that the rotation of the scratchers took place at the location of their reversal?

A. I don't know whether I made that positive statement. It is my opinion that the rotation of the scratchers occurred at the tops and bottoms of the strokes, and not while the scratchers were being moved vertically.

XQ.217: Can you point out where the scratchers reversed, as shown in Fig. 16? A. Figure 16?

XQ.218: Let me reframe that. Is there any indication on Figure 16 in either of the columns where these scratchers reversed?

A. I don't see any evidence in Figure 16 showing the ends of the travel of the scratchers which would indicate that they had rotated at that point.

XQ.219: Can you explain what the longitudinal

(Deposition of Philip H. Jones.)

streaks are that are shown in the left-hand column just below the upper scratcher in Fig. 16?

A. Below the upper scratcher?

XQ.220: Yes. [1822-263]

A. As shown in the picture? There are no significant grooves in any appreciable number. There is one groove, I believe, on the left-hand side of the pipe that extends down part way. That groove probably represents a piece of residual mud cake that had not been removed by the canvas, although I don't believe that was the case, in referring to that particular groove.

XQ.221: Are those rather large cracks in the right-hand column wrinkles in the canvas?

A. I believe those large cracks in the right-hand column are definitely—were definitely caused by wrinkles in the canvas bag, or something of that sort.

XQ.222: Can you account for the longitudinal shading in the form of streaks in that left-hand column below the upper scratcher, and extending completely across the column?

A. I am sorry, but I don't quite understand your question.

XQ.223: There appear to be some darkened longitudinal streaks extending down completely the full length from one scratcher to the other along the left-hand edge, and then just below the upper scratcher these darkened streaks seem to extend completely across the diameter of the column. Can you explain those?

(Deposition of Philip H. Jones.)

Mr. Lyon: I won't agree that there are any such.

The Witness: I don't believe that the streaks do [1822-264] extend clear across the diameter of the column.

Mr. Lyon: Nor do they extend the full length. I think it is a misstatement of the record.

XQ.224: (By Mr. Scofield): Do you see any streaks at all on that left-hand column?

A. Yes.

XQ.225: Won't you mark them, what streaks you see, by the letter B and any subsequent letters? Just mark the streaks with a lead line to each streak which you see. There is already the mark in "A" on the column, so mark any streaks that you find there.

Mr. Lyon: Is that Exhibit J?

Mr. Scofield: That is Exhibit K.

XQ.226: Any streaks that appear on that column mark by the letters "B" and "C" or subsequent lettering.

A. There are—well, that question or request is difficult to comply with, because if you say "any streaks," why, there are a great many infinitesimal small ones. I would have to mark the whole column up to get them all.

XQ.227: Just mark the ones that are significant to you, and show on the surface.

A. I don't think that any of them are significant in the over-all picture. I think the over-all picture shows that there was a rather complete sweeping of

(Deposition of Philip H. Jones.)

the wall of the hole by the scratchers. Now, there are some streaks there indicating that it was not absolutely complete, that there [1822-265] were a few areas where the mud cake had not been removed completely.

XQ.228: Then will you mark those streaks that you have just referred to in your last answer?

A. I will mark streaks that appear to be the most prominent ones. I don't believe that they are significant. Now, you asked me to mark them "B"?

XQ.229: "B, C, D," so that they won't be confused with the letters "A" already marked on it.

A. Will it be all right if I mark them all with the letter "B"?

Mr. Scofield: Yes, that is all right.

Mr. Lyon: Do you think a glass would help you with it?

The Witness: Well, I don't think anything that you have to examine with a glass to find, an infinistesimal ridge is important.

XQ.230: (By Mr. Scofield): I don't want you to examine it with a glass.

A. I am trying to look for streaks that are prominent, that anyone can see, and that is all that I can. In this case I have only made marks on the left-hand column. That is my understanding of your desire; is that correct?

XQ.231: Well, I would like to have you mark the other column, if you will, correspondingly.

A. Very well. I will mark that as "C." Let me [1822-266] have that pen again, please. I am

(Deposition of Philip H. Jones.)

marking here the streaks that are readily discernible.

XQ.232: That is all I want marked.

* * *

XQ.233: (By Mr. Scofield): Did you take this photograph? A. Yes.

XQ.234: Now, this photograph, by any chance, couldn't be a composite photograph, could it, and those two columns shown there be only a single column shown in two positions?

A. No; I made no such——

XQ.235: You are sure of that?

A. I am sure of that.

XQ.236: Mr. Wright, in an affidavit that was filed in the Patent Office, dated February 26, 1949, stated that two hand-made scratchers were made by Adams-Campbell to fit a 3½-inch casing, and that they were delivered to you for these tests. Are you sure that there were four scratchers, four B & W scratchers, when you took this photograph?

A. Yes.

XQ.237: Are you sure that where the right-hand photograph is only partially chopped away there near the bottom that there was another scratcher there?

A. Just a minute, I have lost the [1822-267] place. Yes.

XQ.238: You are sure that you had four scratchers? A. Yes.

(Deposition of Philip H. Jones.)

XQ.239: Wright also said in that same affidavit that these two scratchers that were handmade by Adams-Campbell were used in all three of the tests, with the scratchers shown in Figures 14, 18 and 26. Does that refresh your recollection as to whether or not the scratchers were broken out of these cement columns and reused in the subsequent tests?

A. Just read that again, if you will. 14, 16, what were the numbers?

XQ.240: 14, 18 and 26. A. 14, 18 and 26.

(Pending question read by reporter.)

Mr. Lyon: I object to that method of examination as trying to reduce this witness' testimony by stating what someone else has stated in an affidavit as obviously an improper method of cross-examination. What difference does it make? This witness has not so testified.

The Witness: I answer the question, do I?

XQ.241: (By Mr. Scofield): Please.

A. My present recollection is not clear as to reclamation of any scratchers, and I don't know what Barkis and Wright did in producing the scratchers. I know they were delivered [1822-268] to us.

XQ.242: That statement, if a fact, if it appeared in Wright's affidavit, does not refresh your recollection then?

A. No. I have tried to remember what happened there. You must remember that I was not present all the time while these tests were being made. I

(Deposition of Philip H. Jones.)

had other work that I was doing. I was supervising other research projects, and I was there only part of the time, and some of these—many of these operations were necessarily carried on in my absence, and I just don't remember. I can't remember whether I was present when certain things were done. Where I can't remember about them it may be that I wasn't there.

XQ.243: Let us go on then to the scratchers shown in Figure 18. I believe that is Exhibit G. Now, Wright said in this same affidavit that the ends of the scratchers shown in Figure 14 were cut off and rebent and used in connection with this test. Do you have any recollection of that circumstance?

Mr. Lyon: Same objection as to the preceding question. What difference does it make to this witness what Wright said?

The Witness: I would like to have you reread that question. I, of course, don't know what Wright tested from first hand knowledge, except that you pointed it out here.

(Pending question read by reporter.)

The Witness: I have no clear memory of the manipulation of these scratchers by either Barkis or Wright. [1822-269]

XQ.244: (By Mr. Scofield): Do you remember the particular test that was conducted with this scratcher, Figure 18?

A. I don't know how to interpret your question.

(Deposition of Philip H. Jones.)

XQ.245: What is indefinite about it, Mr. Jones? I just asked you whether you recall this test that was conducted with this scratcher.

A. If you mean by that question do I remember the details of how the test was made, and so on, in detail, my answer is, no. I don't remember the details of the test.

XQ.246: Are you going to have to depend upon the report entirely as to the way this test was conducted, or do you have any independent recollection?

A. I will have to depend almost entirely on the report. I will have to depend entirely on the report as to any details of the operation of this particular test.

XQ.247: Table 1 shows that the tests on this report was conducted with two scratchers of the character shown in Fig. 18, does it not?

A. To what run do you refer? That is the item——

XQ.248: Test Well No. 2, Run 7.

A. I have the place now. What is the question?

XQ.249: Whether or not that run is not recorded on Test Well No. 2, Run 7.

A. Table 1, Test Well No. 2 of Run No. 7, refers to the scratchers shown in Figure [1822-270] 18.

XQ.250: There were two of these scratchers used, were there not?

A. The report shows that two scratchers were

(Deposition of Philip H. Jones.)

used, indicates two scratchers were used. It does not specifically say there were two. It says, "Scratchers were mounted 36 inches and 72 inches above the shoe," so obviously there were just two used.

XQ.251: Is that the way you would interpret it?

A. That is the way I would certainly interpret it.

XQ.252: And they were spaced apart in the manner you have indicated?

A. As indicated in the Table, yes, sir.

XQ.253: During the cementing or the making of the cement column the 3-½ inch casing was reciprocated through 42 inches, was it not?

A. Yes.

XQ.254: And that would cause an overlapping of the upper and lower scratchers at a mid-point of about six inches? A. Yes.

XQ.255: The cement column that was produced with these scratchers is shown in Figure 20?

A. Yes.

XQ.256: And that is Exhibit H? A. Yes.

XQ.257: Which of those columns shown in Figure 20 was [1822-271] produced by these scratchers?

A. As indicated, the—reading from left to right, it was the second column.

XQ.258: And did you take this photograph?

A. Yes, sir.

(Deposition of Philip H. Jones.)

XQ.259: Can you tell from that photograph from what position the picture was taken, whether it was taken from the shoe location or from above?

A. It was taken——

XQ.260: All my questions from here on, Mr. Jones, will be limited to this column that has to do with the scratchers, that were made by the scratchers shown in Figure 14, so we can ignore the other three columns.

A. This picture was taken looking—with the camera pointing in the direction of the shoe, in other words, it was taken from the top to the bottom of the——

XQ.261: Of the column?

A. ——of the column, and the region of the shoe is in the upper part of the picture.

XQ.262: Now, what is the constituency of the column that is shown there, and by that I mean is there cement, mud, and is there pipe there and the scratchers inside there, or just what is the constituency of that column which is shown in the picture?

A. What did the column consist of? [1822-272]

XQ.263: I mean what elements are there in that column that is shown there; in other words, is the cement column shown in one portion and is mud in the other?

A. Well, the picture shows nothing but the residual cement.

XQ.264: Nothing but residual cement throughout its length?

A. With minor—oh, there might be a little mud

(Deposition of Philip H. Jones.)

cake left on it we didn't wash off completely, but the mud cake was washed off these columns, and when we took the picture, why, you see the cement.

XQ.265: Yes.

A. And the nature of the cement billet is indicative of what mud cake was removed and what mud cake was not removed.

XQ.266: So all the column that is shown there is cement? A. Yes, that is; that is cement.

XQ.267: At the upper end there seems to be a termination, and then a roughened surface. What would the roughened surface be?

Mr. Lyon: I would like to have you define, Mr. Scofield, what you mean by "upper end" now. We are getting into confusion here.

XQ.268: (By Mr. Scofield): The top of the picture, do you [1822-273] find a roughened surface which is scored circumferentially there?

A. Yes.

XQ.269: You might mark that by the letter "A," if you will.

A. You refer to the rather deep groove just above the——

XQ.1270: I am referring to all of the column above the portion which is striated longitudinally.

A. Yes.

Mr. Lyon: Just point out on the record the point that was pointed out to you by Mr. John Hall and Mr. Subkow.

The Witness: I am going to have to borrow a pen again. I assume that he is referring to this

(Deposition of Philip H. Jones.)

area here, which I will mark with the letter "A." Is that all right?

XQ.271: (By Mr. Scofield): That is fine.

Mr. Lyon: "A" on Exhibit H.

The Witness: Shall I initial it?

Mr. Lyon: It is not necessary.

Mr. Scofield: No, it is not necessary.

Mr. Lyon: You put the letter "A" on there with a lead line and a bracket indicating an extended area; is that correct?

The Witness: That is correct.

XQ.272: (By Mr. Scofield): What is the area you have marked [1822-274] with the letter "A"?

A. I believe that that is the portion of the cement that was placed in the region below the bottom level of the scratcher, and it was in the region where the downwhirler shoe with 60 per cent side ports traveled.

XQ.273: Was the cement which we are referring to in this figure a solid column, or was there something inside of it?

A. Well, there were—the pipe, the three-inch drill pipe was inside the column.

XQ.274: How long did that extend through the column, through its entire length?

A. I believe that it extended through the entire length shown by the picture. Of course, it did not extend clear to the bottom of the cement column, because the shoe was always some little distance above the bottom of the test well, and that bottom section would be filled with cement, and

(Deposition of Philip H. Jones.)

there wouldn't be anything but cement in that region.

XQ.275: But there was three-inch pipe throughout the length that is shown in this particular picture?

A. I believe it does. It is possible that the three-inch pipe did not come clear to the upper end of the column, as shown in the picture. I believe it did, but that is——

XQ.276: At least we have a three-inch pipe substantially [1822-275] the length of that column?

A. Substantially the length of the pipe, yes.

XQ.277: Is there anything else in there?

Mr. Lyon: That is the same pipe you were talking about——

The Witness: You are referring to the left-hand——

Mr. Scofield: My questions are all limited to that second cement column or billet, as you called it, I believe, in Figure 20.

Mr. Lyon: Always the same pipe was used that was referred to before, that is, which was approximately three-and-a-half-inch o.d. and three-inch i.d.; isn't that correct, Mr. Jones?

A. Yes. I am reasonably certain that there were scratchers inside there. I don't remember chopping them out to see them.

XQ.278: (By Mr. Scofield): Why are you reasonably certain?

A. I am reading the report, and I am reasonably certain that we——

(Deposition of Philip H. Jones.)

XQ.279: Can you locate the scratchers from this photograph?

A. The scratchers inside the cement billet?

XQ.280: Either inside or outside, can you locate them?

A. Let me examine the picture, and see if I can. This photograph is not sufficiently enlarged or sufficiently [1822-276] clear to show the ends of the wires clearly. There is a possible indication of the presence of a scratcher in the extreme upper end of the region swept by the scratcher that is just below the point of "A," or at the bottom portion of the bracket covered by "A."

Mr. Lyon: Will you mark that point to which you are referring with a lead line and the letter "B"?

The Witness: Now, let's see if I can find anything on the bottom one here. There possibly—I don't know that that is what they are. I don't believe the picture is sufficiently clear to permit one to make a definite statement that the ends of the scratcher wires show there. They may be shown by the——

XQ.281: (By Mr. Scofield): These are the best photographs we have—— A. Yes.

XQ.282: ——of those columns that were produced by the scratchers, are they not?

A. Yes, they were as good as I could make. I would like to correct that. I might have—if I had been concerned with demonstrating that particular

(Deposition of Philip H. Jones.)

point I would have taken an enlarged picture of that particular area to show definitely whether or not they showed, but I was trying to take these pictures to demonstrate the general result obtained, and these pictures, as I say, I don't [1822-277] believe are sufficiently clear to establish the ends of the scratchers with certainty.

XQ.283: In your paper that was given at the API on March 19, I believe, 1940—what was it, March 14 or 19? A. I believe it was March 19.

XQ.284: ——March 19, 1940, did you call the attention of the audience that was present to the location of the scratchers and their appearance through the column?

A. Well, I don't remember the words that I used. I have no present memory of having done so, and I am of the opinion that I did not.

XQ.285: Is there any indication in the report that the scratcher wires extended through the cement column to any extent whatever?

A. None that I know of.

XQ.286: If the scratcher wires were long enough to scrape the interior surface of this cement bag would the scratcher wires have appeared on the surface of these cement columns?

A. It seems obvious that the scratchers did remove substantially all of the mud cake from the walls of the hole over the area swept by the scratchers and, as I just pointed out, I can't be certain that the ends of the wires show here. Maybe they did and maybe they didn't.

(Deposition of Philip H. Jones.)

Mr. Scofield: Would you read him the question, and see [1822-278] if you can't answer that better?

Mr. Lyon: I think he has answered.

(Question read by the reporter.)

The Witness: I believe some of them would have been, some of the wires would have been visible, yes.

XQ.287: (By Mr. Scofield): If the scratcher wires had been of sufficient length that the diameter of these scratchers used in this test were of greater diameter than the cement bag, wouldn't those scratcher wires have extended through the cement column?

A. I don't believe that they would, for the reason that they were confined by the walls of the bag, the test well, which was backed up by the perforated pipe, and I don't see how they could extend beyond the canvas bag as long as they were so confined, and the cement was then pumped in with the wires in that condition and set, and the wires then could not move out, and in any circumstances then it seems to me that the only thing you could expect to see in the way of the wires would be a very tiny point of contact, which might be obscured by cement or dirt, or you would—I would expect to just see these tiny tips in some occasions.

XQ.288: It is your present belief that they would just have come to the surface?

A. It is my present belief they would have come very close to the surface, to the surface possibly, although [1822-279] the cement, if the mud cake had been removed entirely, would have pretty much

(Deposition of Philip H. Jones.)

covered the ends of the wires. There might have been just tiny points of contact with the casing that would show.

XQ.289: Do you know why this particular column was not chopped away to expose the wires?

A. No.

XQ.290: Do you know whether there was any film of mud left on the outside of this particular column when the bag was split and folded back?

A. I think that the evidence as presented by this picture indicates that there was some mud left on the cement column.

XQ.291: Where was that mud located with respect to the different areas of the column, can you say?

A. Well, wherever there is a depression in the cement, outside of the possibility of wrinkles in the canvas, such a depression being lower than the normal diameter of the pipe there, I think there would have been mud cake; in other words, the mud cake prevented the cement from occupying that space. The cement set, the canvas was removed, and then that mud cake which had been present which had not been removed from the hole was washed off or cleaned off of the cement billet, and would show as a depression.

XQ.292: Do you remember in this particular test the [1822-280] depth of the mud cake that surrounded the central portion of this particular column?

A. I don't specifically remember it. Let's see if there is any indication in the table.

(Deposition of Philip H. Jones.)

Mr. Lyon: I don't think the question is clear.

XQ.293: (By Mr. Scofield): Do you understand the question?

A. Would you mind reading the question again, please?

Mr. Lyon: Read the question.

(Question read by the reporter.)

The Witness: You refer to the portion that was not swept by the scratchers down by the shoe?

XQ.294: (By Mr. Scofield): I am referring to the portion that shows longitudinal scoring on there, longitudinal streaks.

A. No, I don't remember the depth of the mud cake there that was left.

Mr. Lyon: Do you remember whether there was any?

The Witness: I don't know that any measurements were ever made.

XQ.295: (By Mr. Scofield): There seems to be a rather deep groove to the left of center in that particular column. Was that where the hinge came on the longitudinal reinforcing perforated tube?

A. I don't know with certainty. It [1822-281] would be my idea that that longitudinal groove was caused by the seam in sewing the cement bag together.

XQ.296: Then the seam obviously must have been turned inwardly, was it not?

A. I don't remember how the seam was placed in the bag.

(Deposition of Philip H. Jones.)

XQ.297: How deep would you say that groove was? A. Oh, I don't know.

XQ.298: There seems to be, near the center of the column, a groove running circumferentially of the column, starting at that longitudinal groove or trough. What is that? Was that a fold in the canvas?

A. I don't know what it is. It might have been a fold in the canvas.

XQ.299: Do you know, in the conduct of this test, whether either of these scratchers rotated on the pipe?

A. You ask me if I know whether they rotated. I didn't see them rotate, but I believe the evidence as exhibited by the pictures is rather conclusive that the scratchers did rotate.

XQ.300: That is what I want to know. I want you to point out that evidence.

A. It is substantially the same as the evidence that I pointed out before, namely, that the cement had pretty well filled the annulus, and it shows that the mud cake had [1822-282] been pretty completely removed from the wall of the hole, and that could hardly have happened unless the ends of the wires had traversed different paths instead of a single path on each period of raising and lowering the pipe. Otherwise the wires would have cut grooves in the mud cake, which would have appeared as ridges of cement in the picture, and if you observe the picture you will note that there are a great many tiny ridges of cement, indicating that—the number of little ridges corresponding to the path—each ridge

(Deposition of Philip H. Jones.)

would correspond to the path at the end of the wire—is far greater than the number of wires on the scratcher, and therefore the scratcher wires had to traverse different paths, and the scratcher had to rotate to permit the traversing of these different paths. Also at the bottom, near the bottom of the picture there is an indication of the ends of the stroke, the upper end of the stroke of the lower scratcher. Remember this picture is taken from the top down. I think the general nature of those cement ridges indicates that the scratchers had rotated at the end of the stroke, but to me the most convincing evidence is the fact that almost the entire wall of the well was swept quite clean of mud cake, and there are a much greater number of little ridges than there were wires.

XQ.301: Now, for the enlightenment of the Patent Office won't you state what the significance of the longitudinal grooves is and the ridges between those grooves, [1822-283] shown in the central part of this column in Figure 20?

A. In the region of those depressions—these circumferential cracks in the cement, or grooves in the cement, is that what you have in mind?

XQ.302: No, no, you note that the column is divided into three sections? A. Roughly, yes.

XQ.303: A lower section up to the part where there are a number of what appear to be icicles formed on the column, and then there is a central section, and that is grooved longitudinally up to the point that you have marked "B," and then there is

(Deposition of Philip H. Jones.)

a third, upper section above the point you have marked "B," which I believe you have designated by the letter "A." A. Yes.

XQ.304: I am interested primarily——

Mr. Lyon: Let us read the question. The witness did not have the photograph in front of him.

The Witness: I have the photograph now.

Mr. Lyon: What was the question?

(Question read by the reporter.)

Mr. Lyon: I don't think the question is clear. There are two "Bs" on the photograph, and I don't know where you mean.

XQ.305: (By Mr. Scofield): I mean the section between the [1822-284] part marked "Barkis 3" and the part marked "B" above.

A. I think I know the section you mean.

XQ.306: You know the section?

A. Yes, I know the section you mean. What is the question with respect to that?

XQ.307: The question is first: That particular section is ridged longitudinally, is it not?

A. Yes, it is.

XQ.308: Now, what I want to have you do for the enlightenment of the Patent Office is to state what the grooves are in that section and what the ridges are, and how they are formed.

A. The grooves or depressions were caused by the presence of residual mud cake on the wall of the hole at the time the cement was placed, and the cement then filled the area or space around these, each side

(Deposition of Philip H. Jones.)

of these grooves where the cement had been—where the mud cake had been removed, thus leaving a groove which corresponded to the place where mud cake had remained on the wall of the hole at the time the cement was placed. Correspondingly, the ridges represent regions where the mud cake was more completely removed from the walls of the hole, and permitted the cement to extend to the walls of the hole or very close to the walls of the hole.

XQ.309: So the ridges actually define the travel or the pattern where the wires scratched; is that correct? [1822-285]

A. I believe that they do, yes.

XQ.310: The grooves show a pattern where the mud was left, and which was not completely removed, and where the mud was not removed so that the cement could adhere.

A. Well, now, I don't believe that your question is quite accurate. I do not so interpret the results. The grooves may very well occur where the mud cake had been partly removed, but not completely removed; in other words, a groove might be a very shallow one, and it might represent an area that had been scraped clean at one time in the course of the scraping operation as they raise and lower, and in which a mud cake may have been subsequently deposited during the circulation period. Now, I believe it is clear that the rising and lowering of the pipe and scratchers was carried out during the period of circulation of mud, and water, when water was used, just prior to the cementing operation. I believe that

(Deposition of Philip H. Jones.)

total period was 20 minutes. In this particular test the reports indicate that the mud was circulated 17 minutes and the water was circulated three minutes. Now, during that 17 minutes' circulation period for the mud the pipe was being raised and lowered, and the mud cake was being scratched off the walls of the hole and the mud was present, of course, under some pressure sufficient to cause redeposition of a thin cake where the mud cake had been removed, so that there is an operation in which the mud cake is being [1822-286] removed and in which the mud cake is being redeposited. Of course, the rate of deposition during this period is not such as to cause a very large deposition or thick deposit of mud cake. Now, during the period when water was being circulated there probably was no substantial deposition of mud cake, and where the wall was scraped free of mud cake no further deposition would take place, and during the scraping while the cement was being placed there was no further deposition. The scraping was effective. So that one of these grooves here, particularly the shallow ones, might have represented a place where the mud had been removed completely or almost completely at one time, and then there had been a very slight redeposition.

XQ.311: Is it accurate to say then that the deeper the groove the less mud cake was removed?

A. Yes.

XQ.312: So that at the top where these deep grooves appear there was less mud cake removed?

Mr. Lyon: What deep grooves?

(Deposition of Philip H. Jones.)

Mr. Scofield: The deep grooves are shown as I have designated, and as appear to be icicles there at the location "Barkis 4."

Mr. Lyon: Turn it upside down, and I don't think you will find there are any deep grooves there. Look at it from the right end. [1822-287]

The Witness: What we are doing, of course, is looking at the—the bottom of the picture is the top or the direction of travel of the scratchers.

XQ.313: (By Mr. Scofield): That is right. I am speaking, though, of the deep grooves that are shown in the bottom of the picture.

A. Yes, at "Barkis 3."

* * *

XQ.314: Near the bottom of the picture there appear to be grooves which run up into the central section covered by the scratchers about half an inch. Do you see those?

A. Well, I don't know what you mean by the—the "half inch" as shown in the picture, you mean?

XQ.315: Yes. [1822-288]

A. Yes, there are some grooves. Now, what was the question?

XQ.316: How long would those grooves be on the actual cement column?

A. Well, I don't know.

XQ.317: You don't know? A. No.

XQ.318: You can't tell——

A. I can't tell.

(Deposition of Philip H. Jones.)

XQ.319: ——from the proportions there or from the picture—— A. I don't know.

XQ.320: ——of the column?

A. No, I don't know.

XQ.321: What are those grooves?

A. I think those grooves represent places where mud cake had not been removed as completely as it had from adjacent regions.

XQ.322: Do you recall whether the scratchers that were used in this particular test, and these scratchers now are the scratchers shown in Figure 18, Exhibit G, whether they were chopped out of this column? A. I don't know.

XQ.323: You don't recall?

A. No. [1822-289]

XQ.324: Do you have at the present time any recollection of the tearing of the canvas sack or bag in the first B & W test that was made?

A. I certainly have no clear recollection of the events that occurred there at that time.

XQ.325: Do you remember whether Frank Boyd was present at that time?

A. I do not. I don't even recall that I was there.

XQ.326: Do you recall whether Mr. Frank Boyd ever made any suggestion to you or to Mr. Wright in your presence, or to Mr. Barkis in your presence, as to the mounting of these scratchers on this three-and-a-half-inch pipe?

A. I don't, I don't recall any such conversation.

XQ.327: Do you have one of the pre-prints that were handed out at this API meeting?

(Deposition of Philip H. Jones.)

A. No, I don't. I had a few after the paper was delivered, but there was quite——

XQ.329: Who had them printed?

A. I don't know, I presume the API.

XQ.330: Was it the API or Union Oil?

A. The pre-prints?

XQ.331: Yes.

A. I think it was the API. I am not absolutely certain. I think that was general practice, for the API to print the papers, but I am not absolutely certain of that. [1822-290] I don't know who bore the cost of them.

XQ.332: Have you seen one of them lately?

A. Yes, I think I have seen—I think I saw one this morning, I believe. Maybe Mr. Wright had one this morning. I haven't examined it.

XQ.333: Did you ever make a comparison of that pre-print with the exhibits which have been offered here, as to whether they correspond?

A. The pre-prints?

XQ.334: The pre-print and the Exhibit L.

A. No, I haven't made a comparison.

XQ.335: You haven't made any examination of that?

A. I haven't made any examination, other than a casual observation that one would naturally make, certainly not an examination of details.

XQ.336: Did Mr. Wright deliver these scratchers which you were to test there on Dominguez Hill to you, personally?

A. I am not absolutely certain. My present recol-

(Deposition of Philip H. Jones.)

lection is that he did deliver some of those scratchers used in these tests to me personally, but I don't remember which ones.

XQ.337: Do you know, from your personal knowledge, as to whether or not at the time that you made these tests on this Union Oil project, whether B & W was selling a scratcher commercially on the market? [1822-291] A. I don't know.

XQ.338: Did Mr. Wright tell you?

A. I don't recall that he did. My present recollection isn't clear.

XQ.339: Do you recall when he delivered these to you, or when you saw them there and talked with him from time to time, after he witnessed these different tests, that he told you that he was offering these or any one of these particular scratchers to the trade?

A. I don't recall any specific conversation. It was my understanding that scratchers were available for use in oil wells, and that they could be purchased for such use. Otherwise I would not have consented to test them, if I hadn't know that if the test was successful we could obtain the scratchers and use them practically.

XQ.340: Was that understanding that you had that scratchers were available, was it your understanding that B & W scratchers were available?

A. It was my—it was certainly—as I say, I don't remember the details of any conversations that may have taken place, but it was my understanding that such scratchers either were available or would be

(Deposition of Philip H. Jones.)

immediately available, and I was under the impression that they were available, but I am not absolutely certain of that.

XQ.341: If I understood your answer then, it was your [1822-292] understanding that when these B & W scratchers were delivered to you for tests there at Wilmington or at Dominguez Hill, B & W had scratchers that they were offering to the industry?

A. I believe that is the case. Now, my recollection on the thing is not absolutely certain. I believe they had them available but, as I say, I wouldn't want to swear that they were available at that moment. I didn't have that certain information.

XQ.342: Now, you had evidently some sort of an understanding. Do you know what type of scratcher they were offering at that time?

A. May I have Exhibit L?

Mr. Lyon: That is objectionable. The witness has stated he does not know what they were offering at that time, and it is also indefinite as to time.

The Witness: In Exhibit L, in the report made to the Union Oil Company engineers, and so on——

Mr. Lyon: On March 19, 1940.

The Witness: The report of March 19——

XQ.343: (By Mr. Scofield): Refer to the page, if you will, where you read, if you intend to read from the report.

A. First, I will read on page 5, the first paragraph that starts on this page. It says, "These scratchers are relatively inexpensive, costing only

(Deposition of Philip H. Jones.)

$7.50 each for seven-inch casing." That is to me almost conclusive that at [1822-293] that time they were available. At the time that the actual tests were made I don't know. There was an interval of time between the time the tests were made and when I actually wrote this. I think there is another indication, and that is in the footnote on the bottom of page 5. There is a sentence which says, "In the latest scratcher design the ends of the wires are bent upward on a radius of about one inch to an angle of about 30 degrees. This facilitates running the scratchers into the hole and extension of their radius of action should not add appreciably to the hazard of damaging the scratchers or breaking down the walls of the hole."

XQ.344: When was that written?

A. I don't know. It was written some time after the tests were made, and before it was sent out with this letter of transmittal of March 15.

XQ.345: You wrote that particular sentence into the note?

A. I believe I did. I wrote most of this report.

XQ.346: So that at least at the time that note was written it was your understanding that the latest design which they had was a scratcher with upturned ends; is that correct?

A. That was what I said here, yes, that was their latest design, at the time that I wrote that. That was [1822-294] my impression, that was the latest design at the time I wrote that.

XQ.347: Was that particular scratcher that you

(Deposition of Philip H. Jones.)

mentioned in the note tested during the tests that were run at Dominguez Hill?

A. The seven-inch scratcher? No, we couldn't run a seven-inch scratcher.

XQ.348: I mean a scratcher with the upturned ends.

A. No, we didn't run scratchers with the upturned ends.

XQ.349: Did either Mr. Wright or Mr. Barkis, when these two scratchers were delivered to you for tests there on the Union Oil project, indicate to you that the scratchers that they were having you test were scratchers that were being offered to the trade?

A. You said these two scratchers that they delivered to me. As I say, I don't have a specific memory of how those scratchers were delivered, or how many.

XQ.350: Do you remember what they looked like?

A. What the scratchers looked like, we have pictures of them here.

XQ.351: Where are the pictures shown?

A. The first two scratchers?

XQ.352: Yes.

A. I misunderstood your question. I don't have any [1822-295] pictures of the first two scratchers, and I don't recall the details of construction of the first two scratchers.

XQ353: You don't know how the wires extended

(Deposition of Philip H. Jones.)

from the first scratchers that were delivered to you for test?

A. I am not certain of it. I can say that I believe that they extended out straight from the scratcher, from the body of the scratcher, but I am not certain of that.

XQ.354: Is it your recollection now that they had upturned ends or not?

A. As I say, I am not—I am not at present at all sure of the nature of the scratchers. It is my opinion that they did not have upturned ends.

XQ.355: You have indicated in your direct examination that you solicited the entire trade, and my recollection is somewhat indefinite, as I don't have the record, as to how that was done, but won't you state now whether it was done orally or by written letter? Do you understand the purport of my question?

A. I understand your question. I am trying to recall whether any letters were written. I don't presently recall any letters. It was certainly done, for the most part, by personal contacts, and second-hand personal contacts, in that I would ask our engineers to spread the news, and I presume that they did it.

XQ.356: You don't have a letter of that sort that was [1822-296] sent out?

A. I don't have such a letter in my possession.

XQ.357: And you don't recall that there were any?

(Deposition of Philip H. Jones.)

A. I don't recall there was a letter. There may have been, but I just don't presently recall it.

* * *

XQ.358: (By Mr. Scofield): During your direct examination, in connection with the tests that were made on scratchers shown in Fig. 14 and Fig. 18, you indicated that, "I believe they overlapped." Is there any doubt in your mind that the scratchers overlapped in the reciprocation of the pipe during those tests?

Mr. Lyon: Which one are you talking about?

XQ.359: (By Mr. Scofield): Both.

A. Both tests?

XQ.360: Yes, both the tests made on the scratchers shown on Fig. 14 and Fig. 18.

A. The scratchers shown in Figure 18 is covered by the Run No. 7, Test Well No. 2. It points out that the scratchers were 36 and 72 inches above the shoe, that is, they were 36 inches apart. The travel was 42 inches, and therefore they must have overlapped. The same is true of [1822-297] the scratcher shown in Figure 14, as listed under Run 6, Test Well 4—Test Well 3.

XQ.361: What is your opinion as to the comparative effectiveness of the scratcher shown in Fig. 14 as compared with the results that were obtained with the scratchers shown in Fig. 18, as indicated by the cement columns that were produced?

A. I should say that they are approximately equivalent for practical purposes, yes.

(Deposition of Philip H. Jones.)

XQ.362: If there was any choice between them, which would you say had done the better job?

A. Well, in the particular cases we have here it is pretty hard to say for sure, because there are different degrees of enlargement in the photographs, but I would say that the scratcher shown in Figure 14 had been somewhat more effective in mud cake removal than those shown in Figure 18.

XQ.363: Let us go on now to the tests made on Figure 26, the scratcher which I believe is shown in Exhibit I, and the column produced——

A. I have it.

XQ.364: ——and the column produced in that test, I believe is shown on the left-hand side of the photograph Figure 27, which is Exhibit J; am I correct in that? A. Yes.

XQ.365: And again from the report or from your recollection, [1822-298] if you have a recollection, how many of these scratchers were used in this test?

A. That is covered by Run No. 8 of Table 1. It shows that two scratchers were used.

XQ.366: How were they spaced?

A. 36 inches and 72 inches above the shoe.

XQ.367: That is the same as in the two previous tests?

A. As in the two previous tests, yes.

XQ.368: And the reciprocation was the same?

A. It was 42 inches.

XQ.369: So that there was again an overlapping of six inches—— A. Yes.

(Deposition of Philip H. Jones.)

XQ.370: ——between the two scratchers?

A. Yes.

XQ.371: Also in this figure I assume that the three-inch or three-and-a-half-inch pipe upon which the scratchers were mounted is buried within the column?

A. You are referring, of course, to Figure 27?

XQ.372: Yes, all my—— A. That is right.

XQ.373: ——questions now will be solely with respect to that column, as we have nothing to do with the other two. A. Yes.

XQ.374: As I understand it, they were done with acid, [1822-299] were they not?

A. The other two were done with acid. Yes, there was a section of three-inch pipe inside this cement column.

XQ.375: From this photograph can you locate the scratchers within the column?

A. No, I can't. I can't see anything that you could identify as the ends of the wires.

XQ.376: Can you locate for me on that column the portion of the column through which the scratchers traversed?

A. The scratchers traversed the column from the point marked "Barkis" up in the picture as far as it goes, which, of course, is looking down the column from the top toward the shoe. The scratchers traversed that portion of the column that is shown in the photograph.

XQ.377: Is the lower end of the pattern that is produced by the scratchers shown in the photo-

(Deposition of Philip H. Jones.)

graph? A. The lower——

XQ.378: You might first state, Mr. Jones, if you will, how we are looking at this column. Are we looking at it from the top or are we looking at it from the shoe end? [1822-300]

* * *

The Witness: In this picture the camera was located close to the top of the pipe or the column, and was pointed in a direction downward toward the shoe, so that when we speak of a part in the upper part of the picture, we are actually talking about a portion of the pipe which is in the lower direction——

XQ.379: (By Mr. Scofield): The lower end of the column?

A. Yes, as far as its position at the time of cementing was concerned.

XQ.380: Does the picture show the complete pattern, or the whole length through which the scratchers traveled?

A. It does not show the entire area that was scraped relatively free of mud cake by the scratchers.

XQ.381: It shows a short distance beyond the mid-point of the scratcher pattern, does it?

A. Yes, I would say that is correct.

XQ.382: Do you have a marking on your photograph "Barkis 2"?

A. Yes, I do, yes, "Barkis 2."

XQ.383: Can you identify that location for me?

A. Beg pardon?

(Deposition of Philip H. Jones.)

XQ.384: Can you identify what that is there at "Barkis 2" on the column? [1822-301]

A. Well, that, to me, appears to be the point of—a part of the region of overlap, where the two scratchers overlapped. It looks to me as though that particular point is the point of maximum upper motion of the lower scratcher in the test. I can't be sure of that, but that is what it appears to be.

XQ385: In this column, as in the column that you were examined on produced by the scratcher of Fig. 18, the——

A. That would be shown in Figure 20, would it not?

XQ.386: Yes.

XQ.387: The grooves again indicate where mud cake was left, and the ridges or the promontories again indicate the longitudinal pattern where the scratchers traversed the inside of the canvas bag.

A. I will put it in my own words, if I may?

XQ.388: Yes, if you will.

A. The grooves in the cement column indicate regions where mud cake had not been removed completely from the walls of the hole, some was left, and the ridges represent regions where much more complete mud cake removal was obtained. Over a large portion of the area the mud cake removal was almost complete.

XQ.389: You have indicated in some of your previous answers that the pattern shown in these columns indicate rotation of the scratchers, have you not? [1822-302]

(Deposition of Philip H. Jones.)

A. Yes, I have.

XQ.390: Now, is that same pattern indicated on this column? A. Yes, that is so.

XQ.391: Could the rotation of the scratchers possibly have been produced by the twisting of that rope which supported the three-inch or three-and-a-half-inch pipe from above?

A. Possibly it could. However, if the pipe itself had rotated and carried with it the scratcher, I would [1822-303] expect that the lines representing the travel of the scratchers would not be straight lines parallel to the axis of the pipe, but that they would be at some angle to the axis of the pipe, and I would expect that if there was rotation of the pipe and not the scratchers on the pipe, that the ends of the scratcher wires would have traced substantially the same paths as they moved up and down, and we would have had a series of ridges representing the places where cement had been removed—where mud cake had been removed.

XQ.392: You have indicated that the rotation of the scratchers took place at the reversal points, have you not?

A. I believe that is where it took [1822-304] place, yes.

* * *

XQ.395: You have indicated, have you not, in some of your previous answers that the rotation of these scratchers during the tests took place at the point where they reversed, have they not?

A. I have indicatd that I felt sure that they did

(Deposition of Philip H. Jones.)

rotate, and that the evidence so indicated, and that was what I believed, yes.

XQ.396: What do you think made them rotate at that point?

Mr. Scofield: I don't want him to have any prompting.

Mr. Lyon: I asked him if he wants any of these.

Mr. Scofield: Just leave him alone. I think he is doing very well.

The Witness: The force tending to rotate the scratchers, or forces, was probably or were probably the resultants of quite a complex accumulation of forces. Each of the wires in contact with the canvas bag was exerting some force on the body of the scratcher, and the resultant force—the resultant of all these forces was such as to cause the body of the scratcher to rotate on the casing.

XQ.397: (By Mr. Scofield): That is exactly what I am trying to get at. What were those forces, and if you care to do [1822-305] so you can take them in sequence; first, say the resultant forces of Figure 14 scratcher.

A. Well, in the first place, such forces were, of course, never measured, so I can't say positively what they were or their magnitude was, and what their directions were.

XQ.398: And they are not indicated in the report?

A. They are not indicated in the report.

XQ.399: So anything we will say now respecting——

(Deposition of Philip H. Jones.)

A. What I may say now relative to those forces is the result of my analysis of what I think happened.

XQ.400: Is it theorizing or is it actual opinion from what you see and saw there at the tests?

A. Well, it is a combination. I have tried to—as I go ahead and do this thing, I haven't got fully in mind as to what words I am going to use or how I am going to describe it.

XQ.401: We will bear with you.

A. But I have tried—I will try to consider it from, let us call it a pseudo-theoretical standpoint, and also observation of the results obtained. Possibly if I use a scratcher or piece of paper I could do a little better job.

XQ.402: Feel free to use anything you want here, and if you don't understand my question don't hesitate to ask.

Mr. Lyon: Let the record show that the witness has [1822-306] Exhibit M.

The Witness: I have here in my hand Exhibit M, which is substantially a replica of the scratcher shown in Figure 26, which in turn is Exhibit I. If we place the scratcher so that the axis of the body of the scratcher is in a vertical position, and if we project, let us say, for the sake of simplicity, a radius from the center of the scratcher body outward through the center of the body, and beyond it, if we applied a force to the end of a wire that would represent the continuation of that radius beyond the outside of the main body of the

(Deposition of Philip H. Jones.)

scratcher, and the rim of the scratcher, that is, the body of the scratcher itself was free to rotate around this vertical axis, if a force was applied on the end of that wire directly toward the center of the pipe, I don't believe that there would be any tendency for the—for any resultant which tended to cause the scratcher to revolve.

XQ.403: (By Mr. Scofield): That is a radial force you are applying?

A. I am applying a force parallel with this radius. However, if you assume for the sake of this discussion, that another wire extends from the shell of the scratcher at an angle other than 90 degrees, say some angle that approaches the tangent, a tangent drawn to the body of the scratcher, and apply a force to the end of that wire in [1822-307] the direction of a radius to the center of the pipe or the scratcher, that is, the vertical axis I have been talking about, then at the point of attachment of such a wire to the shell of the scratcher there would be a resultant force which would be tangent to the shell of the scratcher, and if it was free to move would tend to cause it to rotate.

XQ.404: Then this rotational movement that you have now described and the forces that cause it are dependent upon frictional contact between the ends of the wires and the inside of the canvas bag?

Mr. Lyon: I will object to the question on the ground that it is certainly indefinite. I don't know what is meant by "frictional contact."

(Deposition of Philip H. Jones.)

XQ.405: (By Mr. Scofield): Do you understand the question?

A. Well, I would like to disregard that question for just a minute, and expand just a little——

XQ.406: All right, go ahead.

A. ——on my previous statement.

XQ.407: You have got your head, go right ahead.

A. I presupposed a wire in this second set of circumstances in which a wire left the rim of the body of the scratcher proper at an angle between the vertical radius and the tangent. I stated that that might be, or I implied that that wire would be—that that wire was permanently or originally constructed in that manner. I believe, however, that [1822-308] if a wire that had been originally constructed to continue as a radius beyond the rim of the scratcher had been deflected by any force, such as might occur if the distance between the rim of the scratcher and the wall of the hole was less than the length of the wire, which might cause the end of the wire to be displaced sideways, that the resultant force would also tend to cause the scratcher to rotate.

Mr. Scofield: Now will you read him the question, please, that I asked him before.

(Pending question read by the reporter.)

The Witness: If by that you mean that some contact between some of the wires and the wall of the hole would be necessary to cause the generation of these forces which have resultants that tend to rotate the pipe, my answer would be yes. In other

(Deposition of Philip H. Jones.)

words, I don't believe that the scratcher would tend to rotate if it were moved up and down in a column of cement and mud, and that none of the wires touched anything other than that column. Some of the wires would have to contact the wall of the well at some time in order to cause rotation.

XQ.408: (By Mr. Scofield): On this column shown in Exhibit J, Figure 27, we don't see any of the ends of the wires, do we?

A. Yes. [1822-309]

XQ.409: We don't see any of the ends of the wires extending through or to the edge of the cement column?

A. No, I can't point out anything I can show of definite evidence that the wires were present. However, it is quite evident that the ends of the wires had certainly extended into the mud cake itself, which is a plastic body of some strength, and even if the wires had not touched the canvas I believe that the mud cake would constitute a barrier, not as strong or as firm as the wall of the hole would have been, but there would have been a tendency to generate the forces I referred to. I don't know how much they would be. However, I believe that the wires definitely did contact the walls of the well in this test.

XQ.410: Why do you believe that?

A. Because the mud cake was removed almost completely in certain—over a very considerable area, and I don't believe that it could possibly have

(Deposition of Philip H. Jones.)

been so removed if the wires had not actually come in contact with the walls of the hole.

XQ.411: You don't know, that is, I don't believe you have indicated, and I have asked you before, whether or not there was any film of mud left outside of this cement column after the bag was removed. Do you know now whether there was a film of mud left outside of that cement column after the bag was removed? [1822-310]

A. After the bag was removed?

XQ.412: Yes.

A. There was some mud cake. I don't believe there was ever any mud there—there was a small amount of mud cake, very, very thin, or almost none, possibly even none over some of the area, and in other areas there was a definite mud cake left, as exhibited by the grooves.

XQ.413: What is your idea about the removal of the mud and the formation of the cement at the reversal points or where these scratchers rotated? Would the mud at those points be removed more completely or less completely?

A. I believe you are referring to a mud cake and not the mud, are you not?

XQ.414: Yes, mud cake, that is right.

A. I would expect that the mud cake removal at the point of reversal would be less than throughout the main body of the traverse of the scratchers.

XQ.415: Why?

A. Let me attempt to trace what I think is the path of an individual wire, and it may answer your

(Deposition of Philip H. Jones.)

question. I believe that the end of an individual wire would in the process of a stroke be carried to the end of the stroke, and then when the motion stopped the end of the wire would rest against the wall of the hole or in the thick mud cake, and then when the forces were—the motion of the scratcher was [1822-311] reversed and this wire was reversed, and assuming that the forces tending to cause rotation were applied, the forces that I have previously described, before the force causing the wire to rise had completed the normal velocity, the supporting body of the scratcher would be rotated slightly, and the end of the wire would be dragged in the general direction, the vertical direction of motion of the scratcher body, but would be also—there would also be a force tending to pull the end of the wire over into some position approaching alignment with its normal position, and it would then rise again in a different path than it followed when it came down. In other words, you would have a little "V" mark at the end of the trace, as the wire traced its path up and down. It would come down to a point, and then as it was moving in the opposite direction it would, for a short distance, move not on a line parallel with the axis of the pipe, but at a slight angle to it, and after a very short distance of travel it would again assume a direction parallel with the axis or the pipe.

XQ.416: It may be I can help you a little. You understand what I am trying to get at. If I use this scratcher, Exhibit M, which is before you on

(Deposition of Philip H. Jones.)

the table there, the scratcher was located on this three-and-a-half-inch pipe, and let us assume that this is the upper scratcher of the two. Can you visualize that? [1822-312] A. Yes.

XQ.417: It is now mounted on three-and-a-half-inch pipe, and we are going to reciprocate the pipe in an upper direction, and let it appear on the record that I am holding this scratcher, Exhibit M, in my left hand, and will indicate the movement as I understand it traveled during the test. The upward movement was through a period of 42 inches, was it not?

A. Yes, the upward movement of the pipe was 42 inches, but the upward movement of the scratcher would be somewhat less because of the spacing between the stops. The pipe would move a little bit before the scratcher was moved, and I think that that thought should apply to all our previous—all my previous testimony relative to the overlapping. It wouldn't be exactly the distance of the—it wouldn't be the exact difference between the distance of travel and the spacing between scratchers.

XQ.418: How far apart were those rings? They appear to be about twice the width of the scratcher, don't they?

A. Let us see the scratcher here. I would say no.

XQ.419: You are looking——

A. Yes, the total distance between the rings is in the order of twice the length of the scratcher body.

(Deposition of Philip H. Jones.)

XQ.420: You mean the width of the scratcher body?

A. Well, it depends on how you look at it. I [1822-313] was thinking of the length as the actual——

XQ.421: Now, let us try, if we can, to follow the travel of this scratcher and, as you say, there will be a certain lost motion before this lower ring abuts against the bottom of the collar; is that correct?

A. Abuts against the bottom of the scratcher body.

XQ.423: The scratcher body? A. Yes.

XQ.424: Now, this upward movement comes about due to the lifting from this rope above?

A. Yes.

XQ.425: And this pipe is hanging as a pendulum in this canvas sack?

A. Yes, in a way. It is not a free pendulum, by any means, because of the confining action of the scratcher.

XQ.426: But it is hanging in this sack free on this rope from above?

A. Except in that——

XQ.427: Except insofar as it contacts the bag?

A. Contacts the bag, and there may be some friction in the support.

XQ.428: This moves upward throughout its travel until it has gone the distance of the 42 inches, minus the play between the two rings?

A. Yes. [1822-314]

(Deposition of Philip H. Jones.)

XQ.429: Now, when we get to the top of the stroke the movement then is downward?

A. It stops and then——

XQ.430: Stops for the minute, for the instant?

A. Yes.

XQ.431: And then the movement is downward?

A. Yes.

XQ.432: Now, at that point you say the rotation takes place?

A. I believe that the rotation takes place at approximately the time or condition in which the upper ring, as you have illustrated, comes in contact with the upper portion of the body of the scratcher, and starts the scratcher's downward motion with respect to the walls of the hole.

XQ.433: Was there any rotation of this scratcher, whatsoever, and I am speaking of this scratcher that I have in my hand with the bent tines, wires, or whatever you wish to call them, during that upward travel?

A. Well, that scratcher wasn't used, this particular one you have in your hand, of course, but you are referring to the scratchers that were under test, I take it.

XQ.434: They were supposed to correspond to this, were they not?

A. This simulates or almost is the exact duplicate, as [1822-315] far as I am concerned.

XQ.435: Is it your belief that there was any rotation during the upward travel of that scratcher through that section?

(Deposition of Philip H. Jones.)

A. It is my opinion that apart from the region very close to the ends of the travel of the scratcher that there was substantially no rotation of the scratcher.

XQ.436: Now, I will change that question only in this regard: Answer me exactly that same question, whether or not there was any rotation during the upward travel if there was a decided contact or a heavy frictional contact between the inner wall of the canvas sack and these wires? My previous question, you understand, was merely that these scratcher ends may or may not have contacted, but here I am assuming that there is a decided, heavy contact against the wall, and enough contact even to bend these downward slightly.

A. Well, there apparently wasn't a meeting of the minds in the first question, the first part of your question. I assumed that you had presupposed in your question that there was a contact between the ends of the wire and around the thick mud cake or the walls of the hole.

XQ.437: And your answer during the upward travel was that there was or was not rotation?

A. My answer was during the main part of the travel, [1822-316] that I believe that there would be—that there was not—that there would not be rotation.

XQ.438: In answering that, you assumed that there was enough contact between the inside surface of the canvas sack and the ends of the wire to bend the wires downward during the upward travel?

(Deposition of Philip H. Jones.)

A. That is your second question, is it?

XQ.439: Well, I assumed you took that as the first question.

A. I took the first question there was contact. I don't know whether the wires were bent significantly or not. Of course, you could not apply any force to a spring device of that sort without causing motion. There was bound to be some bending of wires if you apply a force to them.

XQ.440: If there was any contact at all, or if there was a heavy frictional contact, you believe that there would be no rotative movement except near the bottom and at the top?

A. I believe that if the forces were considerably greater, which might be caused by a smaller diameter casing or well, say, well wall, than in the first instances, which would make the diameter of the well considerably less than the diameter of the scratcher wires in their normal position, that the exercise of that added force, the application of that added force would not alter the picture, unless that [1822-317] force was changed at some point in the upward and downward travel of the pipe. The forces were substantially the same throughout the motion, apart from the short distance that the ends travel. I believe if there was no significant change in those forces that it would traverse a substantially straight line parallel with the axis of the pipe.

XQ.441: Look at Figure 27, and see if you can

(Deposition of Philip H. Jones.)

tell from that whether there was any rotation of the scratcher during the major portion of its travel.

A. As near as I can tell from this photograph, there was no significant and consistent change in direction of the lines. They seem to me to be substantially parallel to the axis of the pipe.

XQ.442: As to the amount of rotation that these scratchers made at the upper and lower reversal points, would that at all depend upon the frictional contact with the wall of the well or the canvas bag?

Mr. Lyon: Let me have that question, please.

(Pending question was read by the reporter.)

Mr. Lyon: Again I will have to object to the question, as I cannot understand what is meant by "frictional contact" in that question.

Mr. Scofield: Do you understand, Mr. Jones?

Mr. Lyon: If it means the degree of force exerted at that point, that is one thing. If it means the degree of a sliding contact it means [1822-318] another.

The Witness: I believe I attempted to define what I thought you mean by the "frictional contact" as the application of a force to the ends of the wire, and I believe that if that force was increased that there would be a greater tendency for the scratcher to rotate.

XQ.443: (By Mr. Scofield): So that there is a direct relationship between the amount of frictional contact and the amount of rotation?

A. Well, now, that is another question. I

(Deposition of Philip H. Jones.)

wouldn't say that there is a direct relationship, because I don't know. I would say that the greater the force, within reasonable limits, the greater the tendency to move. For example, if the movement itself reduced the force there would be a reduction in the—as the scratcher came up there would be a reduction in the force tending to cause it to rotate, and I wouldn't be prepared offhand to say that the motion of that scratcher, the rotary motion of that scratcher is mathematically a direct function of the forces applied to the end of the wires.

XQ.444: Maybe we can get at it this way: Say there is no contact—— A. Yes.

XQ.445: ——in between the canvas bag and the ends of the wires——

A. Yes, sir. [1822-319]

XQ.446: ——and you come to the top of the stroke, reverse and go down, would there be any rotation?

A. There wouldn't be any rotation, and may I pick it up from there?

XQ.447: Yes.

A. There wouldn't be any rotation, and if you did get a contact with the wall of the hole or a mud cake that offered some resistance to the motion, and could apply some force, there would be a tendency for the force to cause rotation. Now, let us ascribe some finite value, for the purpose of discussion, a finite value to the force applied to say any one wire.

XQ.448: That is all right, go ahead and do it.

(Deposition of Philip H. Jones.)

A. Now, then, if you double that force I don't know just offhand that you would double the motion.

XQ.449: But you are of the belief——

A. But you would increase it.

XQ.450: You are of the belief if there was no contact there would be no rotation?

A. Yes, if it was moved up and down in a——

XQ.451: If there is slight contact there is slight rotation?

A. Yes, I think that there would be.

XQ.452: The heavier the contact the greater the rotation? [1822-320]

A. Within limits. I can imagine a situation in which you would have the wall of the hole so near the outside diameter of the body of the scratcher that the wires would be deformed, and the forces causing rotation might be nullified. I don't know, but I am thinking now in terms of what we usually believe to be the relative size of the scratcher with respect to the walls of the hole, that a variation in the diameter of the hole with respect to the diameter of the scratcher such that the hole diameter grows smaller, that the forces tending to rotate the scratcher would be greater.

XQ.453: In this particular case you have indicated that there was just a slight movement at the top?

A. I don't know what the amount of that motion was. If we examine these pictures we see the multiplicity of ridges, which I pointed out before, but I don't know that one ridge adjacent to another

(Deposition of Philip H. Jones.)

ridge represented consecutive passages of the wire. It might be that the scratcher rotated far more than the distance between those ridges each time; that I don't know.

XQ.455: But we are in agreement, are we not, that if these wires did not contact the wall at all there would be no rotation?

A. If none of the wires contacted the wall of the hole or the mud cake—— [1822-321]

XQ.456: There would be no rotation?

A. ——there would be no rotation, I believe.

XQ.457: At the reversal point?

A. At the reversal point. In other words, if you moved that assembly up and down in a true fluid I think there would be no rotation of the scratcher.

Mr. Scofield: I would like to have the reporter mark a letter dated February, 1940, "Monthly Report, Research and Development Department, Research Division," as Applicant's Exhibit 3. It is dated at the bottom, I believe, March 6, 1940.

(The document referred to was marked by the Notary Public as Applicant's Exhibit 3, and made a part of this deposition.)

XQ.458: (By Mr. Scofield): Are you familiar, Mr. Jones, with Denis Berdines's signature?

A. I certainly couldn't look at a signature that had "Denis Berdine," and say it was a [1822-322] forgery.

* * *

(Deposition of Philip H. Jones.)

XQ.465: Will you please put before you, Mr. Jones, the Exhibit L report. As I understand your testimony, there is in the front of this Exhibit L report an eight or nine-page report that was made to the company which was not made public and was not included in the paper which you gave before the API. A. Yes.

XQ.466: Now, as I read the Union Oil report, which I will call it from now on to expedite the proceedings, and I am referring to these nine pages when I say "Union Oil Report," you indicated in that report, did you not, what one of the methods used was the most effective in removing mud cake?

A. I believe I said that the use of acid was most effective, if you can find that here.

XQ.467: That is as I understand it, so that is sufficient for an answer to my question. What did you say about the use of the mechanical devices in the Union Oil Report?

A. We can just read it out of the [1822-326] report.

XQ.468: I think it is just a short paragraph.

Mr. Lyon: The report is the best evidence of what he said in the report, and this witness' testimony cannot alter or vary it, and I see no purpose in this examination.

XQ.469: (By Mr. Scofield): Please answer the question.

A. I am hunting for the place. "Of the several mechanical scrapers used in the tests, it was found that the best results were obtained with the B & W

(Deposition of Philip H. Jones.)

wire wall scratchers, the Baker straight spring scraper, and Cosco spiral spring well bore cleaner and casing centralizer, and the Baker metal petal basket. They all gave approximately equal mud cake removing performances where they made contact with the walls of the hole." That is the first paragraph that starts on page 3. Would you like to have me examine the report further to see——

XQ.470: Yes, I think there is another reference there to the mechanical devices that may alter that somewhat.

Mr. Lyon: I think if there is any such paragraph it should be pointed out, and the witness should not be required to hunt through the report, just wasting time. If you have such another paragraph where is it?

XQ.471: (By Mr. Scofield): I think it is down at the bottom of the page or the next page.

A. There may be several references to the performances of these various devices in this so-called Union [1822-327] Oil Report. In order to get them all we might read the whole report, but——

XQ.472: You might just refer to where you are reading from, Mr. Jones.

A. You wish me to read this, this third paragraph on page 3; is that right?

XQ.473: No, I asked you in the question just to read from the report if there were any other mention of these mechanical devices which would in any way alter the paragraph that you read above, and then counsel wanted the proceedings expedited,

(Deposition of Philip H. Jones.)

and I have suggested you read that. You might read that over to yourself first, and see if it in any way alters the statements which you have already given.

A. I might say that I am not sufficiently familiar with this report at the present moment to be able to say that what I have read constitutes all of the references to the performances of scratchers. There may be quite a number of them, and in order to be sure to make my statement cover them all I would like to read the whole thing.

XQ.474: Do you remember, Jones, on direct that you said that there was in the report recommendations which you made? A. Yes.

XQ.475: Do you recall what you said on your direct examination with regard to what the results were of the use [1822-328] of the mechanical devices?

A. I don't recall my exact words, no.

XQ.476: Do you recall that as a result of these tests that you said on direct that you made certain recommendations to the Union Oil Company?

A. I answered that question a moment ago. I did make recommendations to the Union Oil Company, which are set forth in the Union Oil—so-called Union Oil Report.

XQ.477: Do you remember so testifying on your direct examination?

A. I believe that was direct examination.

XQ.478: Do you also remember that you testified on your direct examination, and you correct

(Deposition of Philip H. Jones.)

me if I misunderstood your examination, that as a result of these tests that you recommended B & W scratchers.

A. Yes, I recommended B & W [1822-329] scratchers.

* * *

XQ.484: (By Mr. Scofield): All I want you to do is answer the question, if you will, and that is to the effect as to whether or not there is anything in addition to the recommendations in this Union Oil Report that would alter the statement which you just read into the record.

A. You are referring now to the recommendations?

XQ.485: Yes, the recommendations.

A. I will just read the recommendations that are [1822-331] set forth on page 6 of this report, and then we can have the whole picture. It is at the top of page 6, near the top of page 6. It is headed "Recommendation." The first paragraph starts as follows:

"Obviously, the use of any special mud cake removing operation that entails added cost or consumption of time cannot be justified in fields where experience shows that satisfactory shut-offs always can be obtained by standard procedures.

"Where past experience or knowledge of formations indicates the possibilities that satisfactory shut-offs may not be obtained by standard methods, it is recommended that down-whirler shoes and mechanical wall scratchers be used. Their action

(Deposition of Philip H. Jones.)

should materially improve the bond between cement and formation, and increase the probability of obtaining a shut-off.

"Obviously, each well constitutes an individual problem and it is not possible to make specific recommendations for the use of scraping devices that will have universal application. With relatively straight and vertical holes, the centering action of two or more B & W scratchers should be adequate, and these devices constitute the least expensive means for removing mud cakes. There can be no assurance, however, that conditions outlined above actually prevail, and the use of a Cosco spiral spring guide at the shoe to [1822-332] insure powerful centering action appears to be justified. Since a Cosco guide cannot be relied upon to cover the entire wall area over its range of travel, it is suggested that a B & W wire wall scratcher be installed just above the Cosco guide. Since the region just above the shoe usually is most important in a regular water shut-off job, it is suggested that B & W scratchers be located at regular intervals above the shoe for a sufficient distance to cover the region that is favorable for obtaining a shut-off. We do not have sufficient data to recommend limits as to the length of hole to be covered or the number of scratchers that should be applied, but are of the opinion that six or less scratchers should be sufficient in the region of the shoe. The scratchers should be placed at intervals slightly less than the distance that the

(Deposition of Philip H. Jones.)

casing is to be moved during the cementing operation, i.e., if the casing is to be moved 20 feet the distance between scratchers should be about 18 feet.

"Obviously, mechanical or hydraulic removal of mud cake is dependent on movement of the casing after it is run into the hole. Long vertical movements will reduce the number of mechanical scratchers required to cover a given length of hole and a large number of cycles of movement will increase their effectiveness. Where practical it is suggested that the casing be moved continuously during the [1822-333] slurry mixing and placing time over a distance of at least 20 feet at a velocity of about 20 feet per minute or faster if practical. Thus, a complete cycle of up and down motions would be obtained at least once every two minutes. It is also suggested that about 200 cubic feet of water be pumped ahead of the cement slurry."

There is a note "a" after that, after the word "slurry." The note reads as follows:

"Laboratory tests were made as follows: Rates of water flow through a number of permeable sandstone samples were determined. Mud cakes were laid down at 100 and 1,000 pounds per square inch on the sandstone specimens, and losses of water from the mud were measured over time periods of from one to two hours. The mud cakes were removed completely at atmospheric pressure from some of the specimens by washing with water and gentle scratching. Other mud cakes were removed by treatment with hydrochloric acid. The flow of water

(Deposition of Philip H. Jones.)

(pressure against mud cake face) through the cleaned sandstone specimens over varying time intervals at 100 and 1,000 pounds per square inch were determined.

"The water rates through the specimens that had been cleaned with water and scratching were three to five times greater than the losses of water from mud, but were insignificant as compared with the rates through the [1822-334] original clean sandstone. These data show that water loss from cement slurry through permeable formations that had been cleaned by scratching or scraping while flowing water would not be sufficient to cause a premature setting of the slurry.

"The water rates through the standstone specimens that were cleaned with acid were too high to measure accurately at high pressures. If similar cleaning action were obtained at the high pressure prevailing in a well, it is possible that loss of water from slurry to permeable formations would be sufficient to cause premature setting of the cement." That ends the footnote.

The text continues as follows:

"In some wells future production may be obtained from formations above the shoe by shooting through the casing. Protection of these formations against upper and lower water sands may be necessary, and absence of a thick mud cake between set cement and the productive sands is desirable. Therefore, where such conditions prevail, it is suggested that B & W scratchers be placed on the casing to remove mud

(Deposition of Philip H. Jones.)

cake from the potentially productive sand and from the formations above and below it.

"No reliable data are available indicating the number of B & W scratchers that can be used with safety on a single string of casing and still obtain relatively free [1822-335] motion. Several jobs using at least ten scratchers have been reported, and as far as known satisfactory casing movement has been obtained. However, until reliable information is available, showing that a large number of scratchers can be used with safety, it is suggested that an upper limit of ten be established. If the length of formation above the shoe that may be productive is such that a total of more than ten scratchers would be required to cover both this region and the shoe requirements, it is suggested that for the present at least, scratchers be dispensed with over the portions of the productive zone that appear least promising.

"If the hole is off vertical or crooked in the region of the potential productive zone above the shoe, a Cosco guide might be used to advantage.

"Since mechanical (and hydraulic) removal of mud cakes offers considerable promise of improving cementing results at nominal cost and without adding appreciably to the hazards of the operations, it is believed that this procedure should be given a thorough trial. If experience shows that this method does not provide satisfactory improvement it is suggested that acid, which is more expensive and potentially hazardous, be tested."

(Deposition of Philip H. Jones.)

XQ.486: Do you have a clear recollection of the cement columns that were produced by the three B & W scratchers which were tested at [1822-336] Dominguez?

A. Well, that depends somewhat on what you mean by a "clear recollection." I don't know what amount I remember from the tests and what I have obtained from the recent studies of the report itself.

XQ.487: You testified about them——

A. Yes, I have.

XQ.488: ——most of yesterday.

A. I know a good deal about them, but where I got it I don't know.

XQ.489: Would you put those pictures, the photographs of the three columns that were produced by the three B & W scratchers before you, and just state on the record, if you will, what pictures you have?

A. I have before me Figure 16, Exhibit K; Figure 20, Exhibit H, and Figure 27, Exhibit J.

XQ.490: Exhibit K is Figure 16, is it not?

A. Yes.

XQ.491: And that was produced by the scratcher shown on——

A. Figure 14, which is Exhibit F, yes.

Mr. Lyon: You don't mean that Exhibit K was produced by the scratcher? That is the way the question reads.

XQ.492: (By Mr. Scofield): What do you mean by your last answer?

(Deposition of Philip H. Jones.)

A. I mean that the results as depicted by the Exhibit K here were produced by the use of a scratcher as [1822-337] illustrated by Figure 14, Exhibit F.

XQ.493: What produced the column shown on Fig. 20, Exhibit 8?

A. Fig. 20, Exhibit H, the second column starting from the left, is a picture of the cementing—a picture showing the cementing results obtained by use of the wire wall scratcher illustrated by Figure 18, Exhibit G, and the Figure 27, the left column, disregarding the small section of column up to the upper left-hand corner of the picture, illustrates the results obtained by the application of the scratcher illustrated by Figure 26, Exhibit I.

XQ.494: Now, if you are asked to rate these three columns in order with respect to the completeness with which the different scratchers removed mud cake, how would you rate them?

A. You wish me to state which I would——

XQ.495: How you would rate them.

A. ——rate as best?

XQ.496: Yes, sir.

A. From these pictures, which are taken at different magnifications, I mean they are not all from exactly the same relative positions, I can't be certain, but I think it is almost certain that you could say that from an engineering standpoint, that, is a practical standpoint, quite similar, that is, the results are quite similar. [1822-338] However, if we want to, let us say split hairs, I believe that I would

(Deposition of Philip H. Jones.)

rate the results obtained as illustrated by Figure 16 by the scratcher illustrated in Figure 14 as best. It is pretty hard to choose between the results obtained by the scratchers illustrated by Figures 26 and 18. However, I believe that the results, if I had to make a rating, I would say that the results obtained by the scratcher shown in Fig. 26 might be a little better, but I don't think—I don't like to choose between those two. If I have to make a choice, I say that the scratcher illustrated by 26 did a little better job.

XQ.497: I am not going to force you on your second choice. So that you think between those two it is a pretty close selection?

A. Yes, I think it is very close all the way across the line.

Mr. Lyon: You mean you can't split hairs that fine?

The Witness: That is right.

XQ.498: (By Mr. Scofield): Now, if you will put before you again this Exhibit L.

A. I have it.

XQ.499: In that report, as you have previously indicated, there is the Union Oil Report of nine pages and the API Report both bound into the same cover. A. Yes. [1822-339]

XQ.500: In either one of those reports is there any suggestion that the scratchers rotated during the reciprocation, or during any of these tests?

Mr. Lyon: May I have that question?

(Question was read by reporter.)

(Deposition of Philip H. Jones.)

Mr. Lyon: Well, which reports are you talking about?

Mr. Scofield: I am talking about Exhibit L, the report to the Union Oil Company and the other report included in Exhibit L which I understand was a paper he gave before the API.

The Witness: I don't remember any reference to——

Mr. Lyon: To what?

The Witness: ——rotation of the scratchers on the casing.

XQ.501: (By Mr. Scofield): If the inference is drawn——

Mr. Lyon: You are looking at page 5 of the report before you made to the Union Oil Company. Did you take that into consideration in your last answer?

The Witness: I said that the scratchers are free to rotate on the casing, but I did not say that they did rotate. [1822-340]

* * *

XQ.526: I would like to have you just describe briefly, for the enlightenment of the Patent Office, the one sentence there in the note which reads, "Thus in running casing the scratchers remain stationary when the casing is lifted to release it from the spider." Do you find that, [1822-347] Jones?

A. Yes, I find it. The scratchers were mounted between stops and free to move on the pipe between those stops either up and down or around, and

(Deposition of Philip H. Jones.)

scratchers are selected to be larger in diameter than the hole, that is, the wires in the extended position are greater than the diameter of the hole, and therefore when you run the pipe into the hole the scratchers would have to be forced down, and they would rest against the bottom of the upper ring. Now, every time they put on another joint pipe they have to suspend the whole column in the rotary table while they release the elevators from the column and pick up another piece of pipe to screw onto the stub end of the pipe standing up out of the spider in the rotary table. After they have screwed on this second piece, this additional piece of pipe, they attach the elevators to the top of the last joint that has been added, and they have to lift the whole column up a short distance in order to release the wedge-shaped spiders at the rotary table which prevents the casing from sliding in the hole. That means the whole column of pipe has to be raised a short distance, and the method of mounting these scratchers would thus permit the pipe to slide up through the scratcher without disturbing its position for this slight upward lift to release the spider. By that means you would avoid reversing the direction of motion of the scratchers [1822-348] every time the addition of a section of pipe was made, and it should prevent undue flexing of the scratching and should reduce greatly the chances of damaging it as it went into the hole or even knocking down the walls of the hole where you might not want to have it happen.

(Deposition of Philip H. Jones.)

XQ.527: Does it avoid also the picking up of the frictional weight produced by the scratchers through that short length that you have to lift them in order to fasten on the next casing?

A. It would reduce that, reduce the force that otherwise would be applied. I doubt that that would be important, but——

XQ.528: In reading these recommendations from the Union Oil Report this morning I noticed that in that recommendation you suggested that an upper limit of ten scratchers be established. Why did you do that?

A. I didn't want to recommend a procedure or the use of an apparatus that would have a—would add appreciably to the risks involved in cementing operations, and I had no experience with the practical use of these scratchers in the well, and I didn't know that I was capable of analyzing all the possible hazards, and I felt that I ought to put some limit in there so that the engineers might not go to excesses in the use of the scratchers. Frankly, I didn't know what excesses were. I felt that I had to put [1822-349] some limit, and I picked out ten. Now, I can't tell you why I picked out ten right now. I felt I had to give them a figure, and that looked to me like a very conservative and safe limitation to me at the time, and I felt that if they would start out with ten and get by with that all right, that after a few successful runs, why, we might put on more, but——

(Deposition of Philip H. Jones.)

XQ.529: It was a precautionary measure——

A. That's right.

XQ.530: ——which was suggested to your company? A. It was a precautionary measure.

XQ.531: And you had not had enough experience with the use of them to recommend anything different?

A. No, I had no experience in well operations with the scratchers that would give me any confidence to make any other recommendation.

XQ.532: In any of these tests that were made there on Dominguez Hill with the B & W scratchers did you actually look into the ends of the simulated well while the test was being conducted to determine whether the scratchers actually rotated?

A. No.

XQ.533: Now, restricting your answer to the tests made on the scratcher of Fig. 26, which I think is the one with the bent end and the little balls at the end of the wires, on reversal of that scratcher in reciprocation of the pipe, [1822-350] is it your belief that the ends of those scratchers would pivot in the side wall or the wall of the simulated well or in the canvas bag?

A. I don't know just what you mean by "pivot."

XQ.534: I mean would they point into the bag and there each form a pivot?

A. At the point of——

XQ.535: Reversal?

A. ——reversal? I doubt that there would be any significant mark left in the canvas bag by the

(Deposition of Philip H. Jones.)

ends of the wires, because the canvas was backed up by the steel wall of the pipe. Now, in the event that the ends of one of these wires should happen to enter a perforation, it might push itself out normally a little further than its brothers who were against the canvas that was backed by the pipe. However, that would only be a temporary situation. The end of the wire would be moved away from that spot, and whether or not the canvas would recover to its original position, I don't know. I would think it probably would. I doubt that you could expect to find any evidence of the places where these wires had pushed against the canvas wall, unless you made a detailed study with the object of finding it. I certainly didn't do that, and I don't recall any such evidence.

XQ.536: Is it your belief that these wires did pivot to cause this rotation? [1822-351]

A. Well, now, "pivot" is a term that I don't quite understand in this instance. There certainly was some relative motion between the end of the wire and the wall of the canvas bag as the reversal took place.

XQ.537: Is it your belief that the ends of these wires upon reversal, and when this upper ring came down against the top of the collar, did these wires definitely pivot into that canvas wall and cause the rotation, or was there some other action that I am improperly describing?

A. Well, I don't—I just don't understand what

(Deposition of Philip H. Jones.)

you mean "Did they pivot in the canvas and cause the rotation."

XQ.538: What was the action; if you don't understand my version of it, what was the action that caused this rotation?

A. Well, there was contact between the end of the wire and the canvas wall of the hole or the mud cake, and there was a force applied to the end of the wire and, of course, an equal opposite force was against the canvas or the mud cake, and therefore——

XQ.539: Yes, but that contact was with the wall if the scratchers were of sufficient diameter all the way up during the reciprocation, was it not?

A. Probably substantially the same amount of force was being applied. In one case we have a force being [1822-352] applied while there is quite a significant amount of relative motion between the ends of the wires and the mud cake or the canvas bag. I think that while the wires were at rest and just at the point of reversal, and before they had been——

XQ.540: Reversed in their direction?

A. ——reversed in their direction, you might liken the situation to that of a man walking with a cane and putting the cane on a rug. The end of the cane sort of rocks as the handle of the cane moves and——

XQ.541: Would you call that a pivoting action, dragging this cane along the rug and then coming to a stop? Would you or would you not call that pivoting?

(Deposition of Philip H. Jones.)

A. At the point when it stopped you might call it pivoting. I frankly don't know what the exact definition of pivoting is, but if you want to call it pivoting, why——

XQ.542: Let us accept it as pivoting.

A. That is all right.

XQ.543: Say that they did pivot at that point, then what was the action that took place at that point, then what was the action that took place at that point where they pivoted, if you know, that is. If you don't know, why, don't hesitate to say so.

A. Well, I certainly don't know.

XQ.544: Don't attempt to—— [1822-353]

A. I have to guess and theorize, but I don't know what happened.

XQ.545: Is that what you did yesterday in the description that you gave with regard to this pseudo-theoretical theory that you expressed here in connection with the rotation of the collar at this reversal point?

A. You asked me to attempt to—or to describe the forces that I thought caused the rotation of the——

XQ.546: That is right.

A. ——scratcher on the pipe, and I attempted to answer your question. I don't know that I said anything about the pivoting action at the ends of the wires, but certainly that answer that I gave you then was, as I pointed out, an effort to explain in as logical manner as I could what the rotation of

(Deposition of Philip H. Jones.)

the scratcher on the pipe was, which I was convinced had occurred, and that is all. [1822-354]

* * *

XQ.574: Mr. Jones, was this theory that you gave me yesterday of the rotation of the scratchers your theory or was that somebody else's?

A. I have discussed those forces with other people, and honestly don't know whether I proposed that theory first or not. I know people are inclined to say: Well, I did it; well, in this case I am of the opinion that it was my theory, but I am not sure of it. I wouldn't say [1822-361] that I invented it.

XQ.575: When was it you came to the conclusion or made the deduction that these scratchers rotated? I am referring to these tests now we have been talking about throughout your examination of the B & W scratchers that were tested there at Dominguez. When did you come to the conclusion that they rotated on the casing during this reciprocation or at the reversal point?

I can't tell you exactly. It was—I would say it was 13 years ago, or something like that.

XQ.576: That is, was it about the time that the tests were completed or while the tests were being conducted?

A. I just don't know when it was. My conclusions were reached at some time during that—during that period of time, either while the tests were being made or examining the pictures that were

(Deposition of Philip H. Jones.)

taken at the time. I don't know when I reached that conclusion.

XQ.577: That is the thing I was going to ask you next. Was it after you had had the films developed and saw the pictures?

A. As I say, I just don't know for sure.

XQ.578: But you are sure that it was sometime in 1940?

A. Well, I won't say 1940. It was sometime during the period when these tests were being made.

XQ.579: It was during the time that the tests were [1822-362] being made? A. Yes.

XQ.580: Then that must have been in 1939?

A. I believe it was, yes, sometime in there. You see, I took the pictures immediately on exposing the cement blocks.

XQ581: How soon after the pictures were taken were they developed, do you recall?

A. I don't remember. I developed the films myself, and I believe I did it very promptly.

XQ.582: A matter of a week or ten days or two weeks or a month?

A. I would say it was probably less than that. I was taking quite a number of pictures of each set of blocks. I didn't take one picture. I took quite a number of them, and then I tried to select the negative that would give me—that would show best to other people what I was trying to demonstrate.

XQ.583: If it proved to be the fact that the tests on the B & W scratchers were completed by November 15, the pictures were certainly developed by the first of December? A. November 15?

XQ.584: 1939.

(Deposition of Philip H. Jones.)

A. I would say that that is probable, if that date that you presuppose is correct. [1822-363]

XQ.585: You have indicated, haven't you, in your cross-examination, that in none of the tests on these B & W scratchers you actually looked into the test well during the time that the test was being conducted, and saw the scratchers rotate?

A. I am certain that I never looked into the wells while they were being rotated. I might point out that the only time that I know of when the scratchers were moved up and down was during the period when there was fluid in the well, and you couldn't see into it, even if you did look.

XQ.586: Were you ever an eyewitness in any actual demonstrations where scratchers were rotated due to frictional contact with the simulated well?

A. I cannot recall ever having—I was about to say I can't recall ever having seen such a test made. I think that still holds. What I had in mind was, I believe I once saw a scratcher pushed into a piece of pipe, and I can't remember whether the thing was pulled back and forth to show whether or not it rotated, but I just presently don't recall any tests set up to show that the scratchers would rotate.

XQ.587: Where did you see that particular test that you now refer to, as a scratcher being put into a piece of pipe?

A. I have a very hazy recollection, and I am not certain of myself. I am going to have to guess now.

XQ.588: All right. [1822-364]

(Deposition of Philip H. Jones.)

A. I am not stating this as a fact.

XQ.589: Give me your best recollection.

A. My present recollection presently was it was over in the office of Barkis and Wright, but that is a pretty hazy recollection, over in Long Beach.

XQ.590: Who were your assistants in the Research Laboratory there in Wilmington in 1939 and 1940 down to 1943? A. I can't remember.

XQ.591: You don't remember any of their names?

A. Oh, I remember some of them, but I couldn't give you—I couldn't trust my memory to give you an accurate picture.

XQ.592: Did you have an assistant there?

A. I had several engineers and inspectors working for me during that period of time.

XQ.593: What were their names?

A. Well, I know Berdine was one of them. I think one of the other fellow's name was Getchen. I could go to the records probably, if they will let me see them, and find out who they all were. Now, I am going to have to do some guessing, because the timing is something I am not absolutely certain of. [1822-365]

* * *

XQ.597: Do you recall an incident in 1941 when Mr. John Hall, who is here in the room, called on you? A. In 1941?

XQ.598: 1941 or 1942? A. No.

XQ.599: Do you ever recall having seen him or did he ever call upon you for any reason?

(Deposition of Philip H. Jones.)

A. Well, I am reasonably certain that I saw him [1822-366] at Dominguez while these tests were going on, and I believe that he was there on several occasions, how many I can't remember, and my present recollection is not very clear relative to any other times I saw him. I have a hazy recollection that he came down to Wilmington, either while these tests were being run or immediately thereafter, but I am not clear on that.

XQ.600: Now, there are two Halls here at the present time. A. Beg pardon?

XQ.601: There are two Halls here at the present time? A. Yes.

XQ.602: I asked you with respect to Mr. John Hall, who is the younger man. Did your answer have to do——

A. I was referring to Mr. Hall, Sr.

XQ.603: You were referring to Mr. Hall, Sr.?

A. Yes.

XQ.604: Did you see Mr. John Hall at any of these Dominguez runs on any of these B & W scratchers?

A. Well, my recollection of—my present recollection of that is quite hazy. As I believe you asked me some time earlier, it is my recollection that I lost a fraternity key, and I believe he found it and was kind enough to return it to me, but I just don't remember the circumstances. Frankly, I had been out of college a long time, [1822-367] and the importance of that fraternity key wasn't anything like it was when I got it.

(Deposition of Philip H. Jones.)

XQ.605: The Mr. John Hall who is here in the room, was he the man who returned your fraternity key?

A. I said my present recollection of that is not certain. I believe he was. He told me that he did it, and it sort of clicked somewhere in my memory that he did, but I don't remember the details of it at all.

XQ.606: After these runs at Dominguez in 1939 and 1940, do you recall whether Mr. John Hall ever called on you at your laboratory or your place of business at Wilmington?

A. That is after the——

XQ.607: After the runs.

A. After the runs were completed?

XQ.608: Yes.

A. Well, my present recollection of that is not clear. I don't just know when it was. I have a recollection that he had come down to Wilmington at one time, and it is my impression that it was either while these tests were being run or immediately thereafter, and I would say that I believe it was during the interval between the running of the tests and before the report was written, but I am not certain of that.

XQ.609: Do you recall that Mr. John Hall on one of the occasions he saw you, either this or some other, brought into your office a can and a scratcher and made a demonstration [1822-368] for you?

A. I have absolutely no recollection of it. That does not mean he didn't do it, but I have absolutely no recollection of it.

XQ.610: Will this help you: Do you recall some-

(Deposition of Philip H. Jones.)

one coming in there with a can and a scratcher at any time to make a demonstration, and that you called an assistant or two in to watch the demonstration?

A. I just can't recall any such incident.

XQ.611: Maybe this will bring it back: Do you remember during the demonstration which was made for you there that you got down on your knee and looked into the side of the can to see just what the operation was that was being shown you, do you remember that circumstance?

A. I certainly don't. I have absolutely no recollection whatever of the incident at all. I can't remember it.

XQ.612: Do you remember that on the occasion of this demonstration that you made reference to these tests that had been conducted at Wilmington, and told whoever made the demonstration that that is the first time you had seen a scratcher operated in that fashion?

A. I just have absolutely no recollection of any such meeting or any such demonstration or any such—or any such conversation. [1822-369]

XQ.613: Will this refresh your recollection: Do you recall that whoever made that demonstration, and after you had shown him this report that had been made to the API, you gave him a copy of the report?

A. I have absolutely no recollection of any such meeting. Now, I am not saying it did not happen,

(Deposition of Philip H. Jones.)

I just say I have absolutely no recollection whatever of that meeting.

XQ.614: Would this help you: On the occasion of that demonstration, after they had marked the can and the scratcher by means of a string that was tied to one of the scratcher wires, and performed the demonstration, and after you had watched the demonstration, that you stated that you never had seen a scratcher operated or reversed in that fashion?

A. I am sorry, I just have absolutely no recollection of such a meeting. I wonder if it wasn't somebody else.

XQ.615: Will this bring it back to you: Do you recall on any occasion where a scratcher was put into a can, a Wright scratcher was put into a can and was forced down into that can, and you were asked to pull it out and you couldn't pull it out, and that the only way that it was finally gotten out was by breaking it over to the side or tipping it to the side and taking it out at an angle, and do you recall actually making that test yourself with a Wright scratcher?

A. I don't know what is happening now, whether [1822-370] you are bringing back the experience that I thought I had with a Wright scratcher in a pipe in the office of Barkis and Wright in Long Beach. I don't remember whether I manipulated that scratcher or not.

XQ.616: Did you ever have that experience?

A. I don't know. It sort of clicks. I am not—I

(Deposition of Philip H. Jones.)

am not sure. I am of the—it is a very hazy recollection, and I don't know.

XQ.617: Can you see anything through the haze?

A. Not anything but the time I went over to Barkis and Wright's, and I think we had a—he had a piece of pipe there, and I don't remember the size, I don't remember the scratcher, and it is my hazy recollection that that was pushed into the pipe at that time, and I don't remember anything more about it, except that that is fairly clear in my mind. What manipulation of the scratcher was made in that pipe, or whether I had anything to do with it, I just can't remember. [1822-371]

* * *

XQ.624: Do you recall any occasion when Mr. Jesse Hall, who sits behind me here, was in your Research Department or the laboratory out there, or possibly an office?

A. There were laboratories, and so on. It was a rather complete installation.

XQ.625: Where was your office there, was it in the laboratory?

A. My office was in the main building.

XQ.626: Do you recall any occasion in 1941, either in the spring or in the fall, when he was out there and when this demonstration took place?

A. I have absolutely no recollection of any demonstration that took place there, and I have no recollection of Mr. Hall's—of a visit by Mr. Hall at any time subsequent to, let us say when I made the report out, or thereabouts.

(Deposition of Philip H. Jones.)

XQ.627: Do you recall that this demonstration was made to you on two occasions, or do you recall whether the demonstration was made to you on two occasions, one in the spring of 1941, and again in the fall of 1941, in the spring with one scratcher and in the fall with two scratchers arranged in reverse order?

Mr. Lyon: Now, just a moment. That is objected to as [1822-373] a complex, compound question, assuming a fact which the witness says he has no recollection of, and the kind of a question that is asked for the purpose of arguing that the witness affirmed a fact which he has already denied.

XQ.628: (By Mr. Scofield): Do you understand the question?

A. I believe I understand the question, but I have absolutely no present recollection of any demonstration whatever by either of the Mr. Halls at any time.

XQ.629: Did you have in your office out there after these tests were made, and in the year 1941, a B & W wall cleaning guide?

A. Well, I can't say positively whether or not I had one there. I just don't know. I am of the opinion that there was not one there, but there may have been. I don't remember.

XQ.630: Would it help you to recollect this at all, either of these two occasions, if I were to say that you took one of the wall cleaning guides you had there in the office, and tried it yourself in this can that was used to simulate a well bore?

(Deposition of Philip H. Jones.)

A. Well, I have tried my best to recollect any such event, and I just cannot. I have absolutely no present recollection whatever of any such test.

XQ.631: Do you think that it would bring anything to your mind if I were to say or I were to refresh your recollection [1822-374] by saying that you pushed this B & W wall cleaning guide down in the can and it caught on a ridge on the can, and you asked what was that ridge for?

A. I absolutely have no recollection whatever of any such event.

XQ.632: Do you ever remember of taking a can of any sort during the year 1941 and picking it up and looking through it from the end? Do you recall any such incident?

A. Looking through a can from the end?

XQ.633: A demonstration can.

A. Having to do with scratchers?

XQ.634: Yes.

A. No, I have no such memory.

XQ.635: You don't recall that? A. No.

XQ.636: I put before you what is headed "Monthly Report of Research and Development Department, Research Division, November, 1949," and ask you if you can identify it.

Mr. Lyon: Let me see what it is. What is the question?

Mr. Scofield: I asked him if he can identify it.

The Witness: Yes.

XQ.637: (By Mr. Scofield): What is that, Mr. Jones?

(Deposition of Philip H. Jones.)

A. This is a copy of a monthly report of the Research and Development Department, prepared in my division, covering the work done in connection with the improvement of [1822-375] oil cementing technique, and it was signed by Mr. Berdine, who probably prepared the report in most of its detail.

XQ.638: Have you seen that report before?

A. I am reasonably certain I have. I have seen one like it, I am sure.

XQ.639: It appears to be a report, and then an appendix to the report, does it not?

A. Yes. There may be several appendices, I don't remember how many. Our practice was to in at least some instances or in many instances to try to confine the text to a relatively concise and short report, and the supporting data would be carried in an appendix or addition to the report itself, and we have here that situation.

XQ.640: How many pages are contained in the report itself, and how many in the appendices?

A. 14 in the report. I count 37 pages in these appendices.

XQ.641: Do the appendices supplement the report? A. Yes.

XQ.642: In what way? What does it consist of? Are there photographs and diagrams in the appendices? A. Yes, photographs, diagrams.

XQ.643: The photographs that are pasted on the pages in the appendices, part are original prints, are they not, original photographic prints, as dis-

(Deposition of Philip H. Jones.)

tinguished from the cuts [1822-376] that appeared in some of the reproductions of the API report?

Mr. Lyon: What do you mean they are distinguished? They are not even the same in many cases.

The Witness: These prints that we have in these appendices are enlargements of some or all of the negatives that I exposed during the tests in question. The camera used in these tests took a negative that was two and a quarter by two and a quarter, and these are small enlargements. Now, I don't know which, offhand, which of the pictures that appear in this monthly report were incorporated in the final report to the API, and which ones we omitted. They are certainly not the same pictures, in that the enlargement is somewhat different in many cases.

XQ.644: (By Mr. Scofield): Did you take any or all of those, or can you identify any that you did take?

A. Well, as I have previously stated, I am almost certain that I took all the pictures.

XQ.645: You took all the pictures that are pasted into the appendices?

A. That appear here in the appendices and that also appeared in the final report.

XQ.646: How many monthly reports did you make to the Union Oil Company on these tests that you took at Dominguez Hill that we have chosen to identify as the Jones and Berdine [1822-377] tests?

(Deposition of Philip H. Jones.)

A. I don't know that I personally made any. I believe that the monthly reports may have been prepared, all of them, by Mr. Berdine, of course, under my supervision, and I don't know how many were issued during these tests.

XQ.647: Does the report that you have before you bear any relationship to the report, the Exhibit L that has been offered here? A. Yes.

XQ.648: What relationship does it bear?

A. Well, to make my answer complete I would have to go through both reports, and see what parts had been incorporated in the big report—what parts of the monthly report and the appendices thereto had been incorporated in the API report, and possibly additions may have been made in the API report that don't show here, but——

XQ.649: You prepared the API report, did you not? A. Very largely, yes.

XQ.650: What do you mean by that?

A. I was assisted by Mr. Berdine, and I can't be certain as to what he did and what I did.

XQ.651: How many of those monthly reports did you use in the preparation of the API report?

A. I don't remember.

XQ.652: You don't remember?

A. No. [1822-378]

XQ.653: Do you remember whether you used this?

A. Well, now, let me expand that a little bit. If you asked me whether I presently remember using this specific report, I can't remember exactly

(Deposition of Philip H. Jones.)

doing it at that time. I am absolutely certain that I used the data that are incorporated here in preparing the big report, and it is almost certain that I took that data from the report in question. The report I am referring to now is this monthly report and the appendices. [1822-379]

* * *

XQ.656: (By Mr. Scofield): Can you tell at this time how extensively you used that report in the preparation of the API report; that is, I don't want to use the report at all if you did not take any cognizance of it or use it in connection with the API report.

A. I certainly did use it, or the data that it presents, and I am certain in my own mind I used either this report or a copy of the report that was in my own files to do that. [1822-380]

* * *

XQ.702: Mr. Jones, do you recall that in this controversy you gave the Petitioner an affidavit on two occasions?

A. I have prepared at least two affidavits, I believe, for Barkis and Wright in connection with this controversy.

XQ.703: Were there more than two?

A. I don't know, but you asked two, and I remember two, and I am not dead sure whether there was another one or not. I think there were only two, but there may have been more. [1822-399-B]

* * *

(Deposition of Philip H. Jones.)

XQ.727: From the reports that you have been examined upon and which have been offered here, there were three types of B & W scratchers tested in the fall of 1939, during the Jones and Berdine tests, were there not?

A. Yes. Well, there were three——

XQ.728: And one failure?

A. And one that we have no records on in these reports that—one test that failed.

XQ.729: The reason you haven't records on that first type of scratcher was that it was inoperative in this canvas bag?

A. That's right. [1822-400]

* * *

XQ.732: (By Mr. Scofield): Are you familiar with the type of scratcher which they did sell to the trade after these tests were made?

A. No, I don't believe I could identify the scratchers that they supplied the trade immediately after these tests.

XQ.733: Did you recommend to your company that they use B & W scratchers?

A. Yes, I did.

XQ.734: What did you recommend?

A. May I have Exhibit L, please? I made quite a number of recommendations, but with respect to mechanical devices, "It is recommended"—I am reading now from page 6 of the Union Oil part of the report—"It is recommended [1822-401] that down-whirler shoes and mechanical wall scratchers be used." Later on I say, "With relatively straight

(Deposition of Philip H. Jones.)

and vertical holes, the centering action of two or more B & W scratchers should be adequate, and these devices constitute the least expensive means for removing mud cakes." I recommended B & W wall scratchers.

XQ.735: Are you familiar with the wall scratcher that was furnished to your company?

A. You now refer to the first scratchers that were supplied to the Union Oil Company?

XQ.736: After the report was made?

A. No, I didn't see them. I don't know exactly what was supplied.

XQ.737: Do I recall your direct examination correctly which was to the effect that you recommended that Union Oil use B & W scratchers?

A. Yes, I did. I made that commendation. Now, I don't recall whether it was in the cross-examination or the direct examination, but I know that I did recommend that the Union Oil Company use Barkis and Wright scratchers.

XQ.738: And you recommended them immediately after these tests and when this report was made, did you not?

A. They are definitely recommended in this report, and I am sure that I recommended them verbally to the various Union Oil [1822-402] engineers.

XQ.739: Can you say now as to whether that recommendation was for the scratchers which had been tested, or something else?

(Deposition of Philip H. Jones.)

A. Well, I said, "Barkis and Wright scratchers," and I wasn't concerned with the legal aspects of the thing at that time. I knew that the Barkis and Wright scratchers that would be supplied would be substantially the same as say the scratchers used in the second two tests, and I felt that if they were similar in general design, which I knew they were, that they would be effective in removing the mud cake and that was what I was after.

XQ.740: Was there a legal aspect involved at that time?

A. I wasn't conscious of such an aspect. There may have been, but I wasn't conscious of it.

XQ.741: Your recommendation was just "B & W scratchers"?

A. Yes, that is right. I didn't specify any special type. I believe I referred in the report here, however, to a change in the design, which we could probably find. I see in this footnote on page 6: "In the latest scratcher design the ends of the wires are bent upwards on a radius of about one inch to an angle of about 30 degrees."

XQ.742: Did you know what the design was at that time?

A. I saw a number of commercial size, well, commercial scratchers, at about that time, but my present recollection of the minute details is certainly inadequate [1822-403] to provide an exact description at this time of what I saw. From an engineering standpoint at that time I was satisfied that the scratchers that they had available for com-

(Deposition of Philip H. Jones.)

mercial use, for selling to the trade, were satisfactory.

XQ.743: I don't want a description in minute detail, as you say, of the scratcher, but I am interested in knowing whether you knew how the wires extended from the collar, and that alone.

A. Whether I can remember whether they came out radially or bent upward or—I don't know exactly what you mean.

XQ.744: Yes, that is what I mean.

A. Well, from my present recollection I cannot say whether or not those scratchers—whether the wires left the rim of the body at a perpendicular to a tangent to the cylinder or not.

XQ.745: You don't know whether the scratchers that were purchased by your company were radial wire scratchers or whether they were something else?

A. No, I don't. I felt that these scratchers we had used in our tests were satisfactory, and they were. True, they were for a small size pipe, but I regarded them as being practical and useful tools that could have been used in a well, in other words.

XQ.746: You have said that all through your examination, [1822-404] and, of course, I didn't ask you that question. What I asked you was——

Mr. Lyon: I think the witness should be allowed to finish his statement without interruption.

XQ.747: (By Mr. Scofield): Have you anything more to say, Jones?

A. I just felt that these scratchers that we used

(Deposition of Philip H. Jones.)

were practical commercial scratchers, and for all I knew they were taken out of stock from production for commercial use. I didn't know how many they had made.

XQ.748: Now, that prompts me to a question. Did you understand they were taken from stock?

A. I had no understanding on that.

XQ.749: You did not have any understanding?

A. Not as to the origin of these scratchers.

XQ.750: How did you happen to volunteer that statement?

A. You asked me what I thought the commercial scratchers were. I say I don't know whether—these might have been commercial scratchers.

XQ.751: I asked you whether or not you knew how the wires extended.

A. And I answered that I didn't know how the ones that were first purchased for the Union Oil Company extended from that shell of the——

XQ.752: Do you know how the wires extended from the [1822-405] first scratchers that were furnished you by B & W for test in the Jones and Berdine tests?

A. You are referring now, are you not, to the ones that cut the canvas bags?

XQ.753: Well, were they the first?

A. They were the first that I know of, yes.

XQ.754: Do you know how—— A. No.

XQ.755: ——those wires extended?

A. No, I can't tell you exactly how they extended. It is my recollection that they came out,

(Deposition of Philip H. Jones.)

say something like the ones on this—the one we have before us, except I believe the wires——

XQ.756: Will you identify it, please?

Mr. Scofield: Let him identify it.

Mr. Lyon: That is the one he pointed to.

The Witness: Something like Exhibit M, except that my recollection is that those wires were not bent.

XQ.757: (By Mr. Scofield): Then it was more like the one that you have right immediately in front of you, was it not? What is the number of that exhibit you have right in front of you?

A. This exhibit here?

XQ.758: Yes.

A. Exhibit No. 2. Well, now, in Exhibit—if we [1822-406] are going to get down to fine details, I believe that the wires that are shown here, that are present here on Exhibit 2, come out almost perpendicular to a tangent to the——

XQ.759: Would you call that a radial wire? Do they extend radially from that scratcher?

A. Yes, I would say they extend radially, and then are subsequently bent, and I believe these wires on the scratcher——

XQ.760: On Exhibit No. M?

A. ——are almost radial, but not quite. They are off the 90 degrees to the perpendicular somewhat.

XQ.761: This examination that I am conducting now is directed solely to the way the wires extend. Now, is it your belief that the first wires that were furnished by B & W extended from the collar in the

(Deposition of Philip H. Jones.)

fashion that the wires extend from the collar in Exhibit M? A. I don't know.

XQ.762: Exhibit M. You have got the wrong one.

A. I don't know. I certainly didn't examine it in sufficient detail to be able to differentiate between——

XQ.763: You operated Exhibit M, did you not, in the test?

A. I operated a scratcher that was similar to Exhibit M in the test, yes.

XQ.764: You were not able to operate those first [1822-407] scratchers, were you, or were you?

A. No, because the ends of the wires were sharp and they split the canvas, and for that reason certainly, the test failed. Now, I don't know what would have happened had we continued the test, had we been able to continue the test.

XQ.765: Do you know why those wires slit the canvas?

A. As I said before, the wires were sharp on the ends, and it is my recollection that they were quite a little longer, that the diameter of the scratcher was quite a bit longer than the inside diameter of the canvas bag, but I am not certain on that point. But the ends of the wires were sharp, and they cut the canvas just as it might have been cut had they gone in there with a sharp knife or something.

XQ.766: Did you see any of these B & W scratchers that were subsequently purchased by the Union Oil Company after these tests in 1940-1941?

(Deposition of Philip H. Jones.)

A. I believe I did see some on cementing wells, but I am not certain of it.

XQ.767: Did you ever see any of the B & W advertising for their scratchers?

A. I have seen their advertising copy, yes.

XQ.768: I show you a Bulletin No. 101, offered as Petitioner's Exhibit E. There is shown in that bulletin, on the inside, page 2, a scratcher. Do you have any recollection [1822-408] of having seen such a scratcher as that?

A. That looks familiar to me.

XQ.769: Does that look anything like the scratchers that were furnished to the Union Oil Company? A. I don't know.

XQ.770: You don't know?

A. No. As I said, I didn't—I am not sure that I—not even sure that I ever saw any of the scratchers that were sold to the Union Oil Company for use in wells at about that time. [1822-409]

* * *

XQ.775: Do you know whether the B & W scratchers that were furnished Union Oil soon after these tests had upturned ends?

A. I don't know. As I say, I am not even certain that I saw scratchers during the period of two or three years that you have referred to afterwards. I believe I did, but I am not clear in my recollection.

XQ.776: You have indicated during your cross-examination that you saw a demonstration made at B & W's office? A. Yes. [1822-410]

XQ.777: On some type of scratcher?

(Deposition of Philip H. Jones.)

A. Yes.

XQ.778: What type of scratcher was that?

A. I don't remember.

XQ.779: You don't recall it definitely?

A. No, I don't remember what the nature of that scratcher was. [1822-411]

* * *

XQ.786: Did you make a test during the Jones and Berdine tests upon a scratcher which had the wires extending from the collar without any turn-back or bend of any sort?

A. I am sorry, I do not quite understand the question.

Mr. Scofield: Read him the question, [1822-412] please.

* * *

The Witness: The three tests reported covered three different types of scratchers, all of which had the ends of the wires turned, bent in one form or another. The first test, on which there is not any report, which they are not pictured or discussed in the reports, the test probably was made with a scratcher that did not have any turn in the wires. I might say that the scratcher as shown in Figure 18 had the ends of the wires bent in such a sharp "U" and in such a plane that, for all practical purposes, the scratcher acted as a scratcher would have done with perfectly straight wires. The object of—that is, the turning of the wires back on themselves at the end served the purpose of eliminating the sharp end which had previously cut the canvas,

(Deposition of Philip H. Jones.)

and it provided a scratcher which, in my mind, was the equivalent of a straight wire scratcher.

XQ.788: Now, in that previous question, in your use of the words "perfectly straight," and "straight," do you [1822-413] mean radially?

A. Well, let us—we will have to go back and read my answer, I guess, because I don't know just exactly——

XQ.789: Do you mean "radial" instead of "radially"?

A. Why don't you rephrase your question?

XQ.790: You have answered it. All I want to know is, in the previous answer you used the terms "perfectly straight," and the term "straight," and I want to know whether, by those terms, you mean "radially"?

Mr. Scofield: Read him his answer.

The Witness: I don't know where I used those terms. That would be the answer. Let us read the answer, and when I get that, why, I will be able to tell you.

(Record read as requested.)

The Witness: I meant in referring to "perfectly straight" and "straight," the wire scratchers, scratchers having wires extending radially from the body of the scratcher proper, and also wires that had not been bent to any appreciable degree beyond the point where they left the main body of the scratcher.

XQ.791: (By Mr. Scofield): In order that there be no confusion on this record, with respect to the scratchers which you have testified about and

(Deposition of Philip H. Jones.)

which I am now questioning you about, will you put before you Figure 14, which is [1822-414] Exhibit F? A. I have it.

XQ.792: That scratcher shows a wire abrading element which is doubled back in the form of a letter "U," does it not? A. Yes, it does.

XQ.793: Now, how do the wires extend from the scratcher? Do they extend radially, or in some other direction?

A. I would say that those wires came out substantially radially.

XQ.794: Let us take Figure 18, which is Exhibit G. Will you describe the wires that were used with that type scratcher?

A. As near as I can tell from this photograph, and I think it is fairly reliable, the wires extend from the body of the scratcher radially almost perpendicular to a tangent to the body of the scratcher, and at the outer ends the wires were bent downward in a sharp, I think a very short radius, 180-degree bend, so that the plane of the "U" formed by this bend was substantially parallel to the axis of the pipe.

XQ.795: Do you think that it is in a plane parallel to the axis of the pipe?

A. That is, the plane of the "U"——

XQ.796: The plane of the "U"——

A. ——is substantially vertical, and that would be parallel, as I say, or in line, which would probably be [1822-415] a better way of putting it, with

(Deposition of Philip H. Jones.)

the axis of the pipe. By this method the surface scratched was approximately the same as the surface that would have been scratched had the wires been——

XQ.797: Radial?

A. ——cut off, and not bent at all.

XQ.798: Had they just been radial wires?

A. Had they just been radial wires, yes. In other words, by this method a device was produced that did not sweep an area of the wall of the test well that would be significantly greater than would have been swept had the wires merely been cut off.

XQ.799: It is your opinion that the plane of it was then parallel to the axis of the pipe in Figure 18?

A. Substantially so. There may have been slight discrepancies here and there, but, for all practical purposes, I believe that the plane of the "U" was vertical.

XQ.800: How do you think the plane of the "U" lies with respect to Figure 14, Exhibit F, the first one we referred to?

A. The way I am using the term, the plane of the "U" here is at 90 degrees to the axis of the pipe. It is 90 degrees out of face with respect to the ends of the "U's" on Figure 18.

XQ.801: Now, look at Figure 26, and describe the type [1822-416] of wire that was used there. That is Exhibit 1.

A. In this scratcher the wires appear to leave the main body of the scratcher at an acute angle,

(Deposition of Philip H. Jones.)

and not 90 degrees to a tangent to the outer rim of the scratcher. They don't come straight out from the scratcher. They are not radial.

XQ.802: That is, the wires do not extend radially for any distance at all, they take an angle immediately from the collar?

A. From the collar itself. They leave the collar at a slight angle, and then are subsequently bent in the same direction as the angle at which they leave the original collar. [1822-417]

* * *

XQ.808: I understand you were not familiar with what type of scratcher they were offering to the trade?

A. I am not. I don't recall the details of the scratchers that were in their—in storage, at their offices or storage place at Long Beach. [1822-418]

XQ.809: But you were out there?

A. I was out there, yes.

XQ.810: On how many occasions between 1939 and 1947? A. I don't remember.

XQ.811: Well, was it once or was it many times?

A. Well, I know it was once, and it wasn't many times.

XQ.812: What would you say, how many times do you think you were out there during that period of time? A. I don't know, I don't know.

XQ.813: You would not want to venture a guess?

A. No.

XQ.814: Did they show you what they were offering?

(Deposition of Philip H. Jones.)

A. I don't recall the objects of the visit specifically, visit or visits, but I saw scratchers and other devices. I believe there were other devices, but I am not absolutely certain even of that.

XQ.815: I did not ask you what the object of your visit was. I asked you if they showed you at this time or times when you were there in Long Beach the type of scratchers they were offering to the trade.

A. They showed me scratchers there, yes, and I presumed that they were being offered to the trade.

XQ.816: Do you remember what those were?

A. No. As I said, I don't recall the [1822-419] details of those scratchers. They had the general appearance of a scratcher that might have resembled the Figure 26 scratcher, or Figure 18 scratcher with straight ends. I don't remember. They might have been that way.

XQ.817: To your knowledge was this Figure 26 scratcher ever offered to the trade up to 1947?

A. I don't know whether or not it ever was.

XQ.818: Do you know that it was?

A. I don't know whether it was or whether it was not.

XQ.819: Do you know whether the Figure 18 scratcher was ever offered to the trade, to your knowledge?

A. I don't know whether it was or whether it was not.

XQ.820: Do you know whether the Figure 14 scratcher was ever offered to the trade?

(Deposition of Philip H. Jones.)

A. I don't know whether it was, whether or not it was ever offered to the trade.

XQ.821: You have indicated that the Exhibit 2 scratcher, which you have before you on the table, was not tested during the Jones and Berdine tests.

A. I believe that is correct, that we did not test this type of scratcher when we were—by "type," I mean we are now getting down to the details of the configuration of the wires at the ends.

XQ.822: You are not ready to swear at the present time [1822-420] just how that scratcher would operate, were it reciprocated on a pipe, or are you?

A. I am not in a position to state with absolute certainty how anything would operate in any circumstances. I can say how I believe it would operate.

XQ.823: But any opinion as to how that scratcher would operate on a pipe would be merely a guess or theorizing, so far as you are concerned?

A. Well, I think it would be more than a guess, but it certainly wouldn't be based on any observations that I have made of that particular scratcher.

XQ.824: Because that was never tested?

A. We never tested a scratcher of that character. I feel certain there is a remote possibility, as I have indicated, that the first scratchers that we received had wires bent like that, but I doubt it. I believe they were radial.

XQ.825: Did you ever test that scratcher, that is, I am now referring again to the Exhibit 2 scratcher, after the Berdine test? A. No.

(Deposition of Philip H. Jones.)

XQ.826: Do you know whether your company ever tested it?

A. No. Now, by that do you mean whether my company ever tested it in a series of surface tests, or tests in any oil well? [1822-421]

XQ.827: Well, let us take the first one first.

A. Surface test similar to the ones that I made, I believe that no tests were ever made, no surface tests similar to the ones described in this report were ever made with this scratcher identical with that in form.

XQ.828: Did you have knowledge of a test that was made on that scratcher at Santa Fe Springs?

A. No.

XQ.829: You did not know about that?

A. I may have known that they used scratchers about that time, but I did not know the exact nature of the scratcher that was used, and I am reasonably certain that I did not see it.

XQ.830: Did you know of any test, service test I am referring to, that was made on a B & W scratcher or scratchers at Santa Fe Springs?

A. No.

XQ.831: Do you know of any subsurface test or tests that were made actually in oil wells by the Union Oil Company on B & W scratchers?

A. Well, I am reasonably certain that—I am reasonably certain that they used them in wells, and I would presume that you would regard the first tests, the first use as a sort of a test.

(Deposition of Philip H. Jones.)

XQ.832: And you don't know what [1822-422] they used?

A. Now, by that question you mean I don't know the minute details?

XQ.833: No, not the minute details, merely how the wires extended from the collar support.

Mr. Lyon: That is a minute detail.

The Witness: I consider that a minute detail, and I do not know.

XQ.834: (By Mr. Scofield): Do you know whether they made any tests on radial wire B & W scratchers? A. I don't know.

XQ.835: In this report you made a recommendation that the number of scratchers be limited to about ten? A. Yes.

XQ.836: Why did you do that?

A. I believe I went into that with some detail before.

XQ.837: Just give me briefly the reason, will you?

A. Let's go back and read the question, can we do that? You can read the question, can't you, from the record, the answer to the question, the answer that I previously made?

Mr. Lyon: Read him the question.

(Record read by the reporter.)

The Witness: I was concerned with not adding significantly to the risks involved in cementing operactions in [1822-423] wells, and I felt reasonably certain that there would be no significant risk involved in the use of a small number of scratchers, and I

(Deposition of Philip H. Jones.)

had to arrive at some sort of a figure to guard against possible excesses, the use of excessive movements which might or might not have caused risk, so I selected the number ten as the one that at that time I thought was a reasonable value to recommend, that we would thereby get effective mud cake removal, and not greatly add to the hazards involved in the operation. I felt that if no difficulties were encountered that the number might be increased in the future if the need for added scratchers became apparent.

XQ.838: (By Mr. Scofield): What was this risk or hazard that you were apprehensive about?

A. Well, I don't believe that I could enumerate in detail the risks that I thought might occur. A cementing operation is somewhat risky in that a pipe may stick before it is finally placed where they desire to have it placed, and I believe that any external apparatus or device on the outside of the pipe would somewhat increase the hazard of sticking.

XQ.839: You were asked, were you not, to give affidavits in connection with this controversy or matter? A. Yes, I was.

XQ.840: Who first asked you about executing an [1822-424] affidavit here, do you know?

A. I don't remember.

XQ.841: Do you recall that Mr. Subkow at one time called you and asked you whether or not you would sign an affidavit or give an affidavit with regard to the tests that were made at Dominguez Hill?

A. I don't recall that Mr. Subkow ever asked me

(Deposition of Philip H. Jones.)

to sign an affidavit. I remember Mr. Subkow called me up, and in substance wanted to know whether I would be willing to act as an expert witness for the Hall interests, and I told him at the time very frankly that I had contacts with Barkis and Wright that I believed would certainly make it undesirable for me to do that, and I told him frankly what my relations with them were, and I don't recall ever having heard from him again.

XQ.842: Do you recall the occasion that you talked to Mr. Subkow on the phone, and you told him you were agreeable to tell what the tests were at the Union Oil Company, and that after that you recall him and told him that you wouldn't be able to do that, that you had agreed to give B & W these affidavits, or an affidavit?

A. Now, I believe that that is in part correct. I had forgotten the subsequent conversation. However, I believe that what I said was that I was perfectly willing to tell anybody what we did there, that it was public, and that [1822-425] I would be willing to give facts as I recalled them.

XQ.843: With your present recollection refreshed by my question, won't you again give your best recollection with regard to your phone conversation with Subkow? First, you might state whether it was prior to the time that B & W contacted you or subsequent to it?

A. I don't remember whether it was prior to or afterwards. I remember he called me up, and the substance of the conversation that I have just given

(Deposition of Philip H. Jones.)

you took place, and I don't recall how much later it was that I did call him.

XQ.844: But you did call him back?

A. I did call him back, and told him that I didn't feel that it would be—I don't remember exactly what I told him, but the essence of the thing was I refused to become an expert witness.

XQ.845: Did you tell him at that time that you were going to give Barkis and Wright an affidavit of some sort?

A. I don't remember what I told him in detail. As I said, the essence of the conversation was that I would not be willing to serve as an expert witness for the Hall interests.

XQ.846: Over the week end have you had an opportunity to reread these affidavits?

A. I haven't hunted for them, I haven't seen them, I haven't done anything in connection with the case except [1822-426] try to forget it.

XQ.847: Do you recall how many affidavits you gave in this matter?

A. Well, I am certain that there were two. Now, it is possible that there was a third, but I am not at all sure of that.

XQ.848: Do you have any recollection when the first one was signed by you?

A. It was several years ago, but I don't remember.

XQ.849: I would like to have you relate, if you will, the circumstances of giving that affidavit, and what I am primarily interested in, of course, is who

(Deposition of Philip H. Jones.)

contacted you and what you were asked about, and just how the affidavit was developed and signed.

A. Well, I don't know who contacted me first.

XQ.850: You don't remember who first contacted you?

A. No, it might have been any one of a number of people. I just don't remember.

XQ.851: Can you remember the number that one of whom must have contacted you?

A. Well, I will guess. I will say it was probably either Mr. Wright or Mr. Barkis or Mr. Caughey. It might have been Mr. Lyon.

XQ.852: You mean the Mr. Lyon that is here, Mr. Lewis Lyon? [1822-427]

A. Mr. Lewis Lyon, and it might have been—the first contact might even have been by one of the employees of Barkis and Wright, but I don't believe that they were involved in it.

XQ.853: Where did they contact you?

A. I don't remember.

XQ.854: You can't narrow that down at all? You don't want to state at this time that it was Lewis Lyon, do you?

A. I told you that I didn't know who did it.

XQ.855: You don't recall exactly who first contacted you?

A. No, I don't. I don't believe it was Lewis Lyon, but I don't recall who did it. I think, I believe that Mr. Caughey was handling the work at that time, but I am not sure.

(Deposition of Philip H. Jones.)

XQ.856: What was done now, and what were the circumstances with regard to the preparation and the signing of this first affidavit? Now, this affidavit was subsequent to the Jones and Berdine tests, was it not? A. Oh, yes.

XQ.857: So that it is much more recent than the Jones and Berdine tests? A. Yes.

XQ.858: At least ten years more recent?

A. I said I didn't know when it was [1822-428] signed.

XQ.859: If it was signed in 1949 it would have been ten years more recent than the Jones and Berdine tests? A. Yes, it would.

XQ.860: Now, can you give me the circumstances?

A. My recollection is that I came up to the offices of Lyon & Lyon, and I believe I dictated a rough copy of the—dictated the affidavit to one of the secretaries here, and then corrected the rough copy, and then a signed affidavit was evolved from this dictation and correction, and that I signed it.

XQ.861: It was done in the office of Lyon & Lyon? A. I believe it was.

XQ.862: And it was your recollection that it was with Mr. Caughey?

A. That is my recollection, but I am not certain of it.

XQ.863: Was Mr. Lyon present?

A. I don't remember.

XQ.864: Was Mr. Barkis present?

A. I don't remember. I believe Mr. Wright was

(Deposition of Philip H. Jones.)

present, but I am not absolutely certain of it. In referring to these affidavits I am, of course, referring to the first of the two that I am sure that I executed. There is a possibility that there was a third, as a very remote possibility, and I am not referring to that. [1822-429]

XQ.865: My examination here has been solely on the first affidavit.

A. The first of the two, yes.

XQ.866: So——

A. O. K., we understand each other.

XQ.867: ——if there is any change from that you can indicate on the record.

A. No, I am referring—we were referring to the same thing, I feel sure.

XQ.868: I show you a negative photostat of an affidavit, and ask you whether or not you can identify it?

Mr. Lyon: Let me see what is handed the witness.

The Witness: I recognize my signature on the last page of this document, and it says, the first page says, "In the United States Patent Office, Affidavit of Philip H. Jones."

Mr. Lyon: Is it dated?

The Witness: It is dated on the last page as the 11th day of March, 1949.

XQ.869: (By Mr. Scofield): Does that date of execution refresh your recollection as to when this affidavit was made?

A. No, it doesn't. You mean when it was made?

(Deposition of Philip H. Jones.)

Well, the date says to me it was made on March 11, 1949, yes.

XQ.870: You haven't any doubt about that?

A. But it certainly—looking at the signature of the notary public, it says here [1822-430] "Josephine Gobel."

Mr. Lyon: G-o-b, is it not?

The Witness: Is it G-o-b? I can't recall who, to know who Josephine Gob is.

XQ.871: (By Mr. Scofield): You are the party who signed the affidavit, I wasn't there. Do you know who she is?

A. No. Josephine Gob?

XQ.872: You did sign it before a notary, didn't you?

A. Oh, sure, I signed it. This is my signature.

XQ.873: Does that girl's name refresh your recollection as to where the affidavit was executed?

A. Well, now, at first I thought that that was—and it may be—I don't know the names of the girls in the Patent Office of the Union Oil Company, but it makes me wonder whether or not I actually signed this affidavit in the Union Oil Company Patent Division down in Wilmington. It is possible. I don't know who this girl is. It is possible that—the execution part to the thing would seem I may have signed it down there. I may have prepared it down there, and I possibly have—may have been confused between the first and the second affidavits. I know I did sign one up here, and I don't recall specifically whether—this may have been signed at the Union

(Deposition of Philip H. Jones.)

Oil Company. I might have been in error in my recollection that it was signed up here.

XQ.874: Do you know the notary's name in Lyon & Lyon's office before whom you [1822-431] signed—— A. No, I don't.

XQ.875: ——an affidavit before?

A. No, I don't, and I thought this was—I am reading this as Josephine Gobel, off the record.

XQ.876: No, on the record, just put it on the record.

A. May I say something off the record?

XQ.877: While you are being examined I prefer to have you on the record.

A. I have got nothing to say.

XQ.878: Then you think there is a possibility that this affidavit may have been signed somewhere else than in Lyon & Lyon's office?

A. Well, this—looking at this signature, when I first looked at it, I thought it referred—that the Josephine part of it, and I thought it was Gobel, and I believe that there is a girl in the Union Oil Company Patent Office, or was a girl in the Union Oil Company Patent Office at that time that had a name similar to that, and if that was the case, why, it would indicate to me that I had signed it in her presence in Wilmington, and that may have happened, I don't know. I wouldn't—I certainly wouldn't state with certainty that that happened.

XQ.879: In referring to the "Patent Office" in the previous answer, you mean the Patent Department of the Union Oil Company? [1822-432]

(Deposition of Philip H. Jones.)

A. I am referring now to the Patent Department of the Union Oil Company, which at that time was located at Wilmington, about 20-odd miles south of here.

XQ.880: Do you recall whether or not you ever signed an affidavit there in the Patent Department of the Union Oil Company?

A. Oh, I have signed affidavits.

XQ.881: I mean for this particular matter.

A. As I say, I do not—I am not certain of myself. I may have signed this affidavit there, and I may have signed it up here, I just don't know.

XQ.882: Were you given a copy of the affidavit after you signed it?

A. I believe I was, but I am not certain of that. I don't know where it is now, if I have it.

XQ.883: Have you read this affidavit since last Friday, when an affidavit was put before you when we adjourned? A. No.

XQ.884: I would like to ask you a few questions about it, and would you prefer to read it before being questioned, or do you have it in mind pretty well?

A. I don't have it in mind well enough to answer questions on it.

XQ.885: Why don't you read it through, if you will? A. May I? [1822-433]

Mr. Scofield: Yes.

(A short recess was here taken.)

Mr. Lyon: I will ask that the affidavit which has

(Deposition of Philip H. Jones.)

been handed the witness be marked for identification in the proper manner.

Mr. Scofield: Let us mark it as Applicant's Exhibit 5 for identification, and I assume that a photostat taken from it will be satisfactory?

(The document referred to was marked by the Notary Public as Applicant's Exhibit 5 for identification, and made a part of this deposition.)

Mr. Lyon: I have no objection to the use of photostats if they are photostats of properly executed documents, and subject to correction, if any, that may appear on the original. I have no objection to the use of photostatic copies, if a comparison of the original shows that they are correct copies of it, subject to correction if they are not.

Mr. Scofield: We will furnish counsel with photostats of this negative, and give him the opportunity at any time to check the authenticity of the photostat which is furnished to the Patent Office.

XQ.886: Since the recess, Mr. Jones, you have had an opportunity to read your affidavit dated March 11, 1949, marked for identification as Exhibit 5? [1822-434] A. Yes.

XQ.887: On the bottom of Page 2 of this affidavit it is stated, "That it is my recollection that two or possibly three scratchers were supplied by Mr. Wright."

Now, you have testified with respect to these tests. Do you believe at this time that that is an accurate statement?

(Deposition of Philip H. Jones.)

A. Well, I believe that the photographs in Exhibit L show that there were at least four individuals involved in the tests. Now, in just reading this alone, I am not dead certain here whether I meant at least two and—whether I meant two types of scratchers here in this affidavit or possibly three types, or whether I referred to it as three individuals. If I referred to it as two or three individuals, I believe that that was an error. My recollection at that time was not correct.

XQ.888: What do you think that you meant by that part of the affidavit; that is, you can read on to the bottom of the page, if you with to, and just tell me what you meant by the numbers you have indicated there.

A. Well, as I read through the affidavit, I find that I refer to bending of the wires on scratchers, and I may have referred to individual scratchers as being two or three, and if I did refer to them as individual scratchers it seems obvious that I made—that my recollection was in [1822-435] error.

XQ.889: You think that that part of the affidavit means that there were two or possibly three individual scratchers rather than types of scratchers furnished?

A. It may have. It is not quite clear. It may have meant that. Also, it may have meant that there were two or three types. There were three types tested.

XQ.890: Was there any report made as to the test made on the first scratcher which split or tore the bag?

(Deposition of Philip H. Jones.)

A. There is a reference to it here [1822-436] somewhere.

* * *

XQ.911: My question was as to whether or not there is a statement in the affidavit that the scratchers rotated?

A. I don't believe that there is any specific statements saying that the scratchers did rotate during the tests. [1822-442]

* * *

XQ.918: (By Mr. Scofield): In 1949 you were questioned, prior to the time that you signed this affidavit, with regard to these tests, were you not?

A. I was questioned prior to making this affidavit?

XQ.919: Yes.

A. Well, at about that time—now, I don't get your question again. Let's say it again. I haven't got the full question in mind.

(Question was read by the [1822-444] reporter.)

The Witness: I was questioned, yes, undoubtedly, regarding these tests. I don't specifically remember the details of the questioning, but I would expect that I had been questioned. Now, if you ask me do I remember being questioned I will say I don't remember, but I am certain that I [1822-445] was.

* * *

XQ.930: (By Mr. Scofield): You have before you, I believe, Mr. Jones, a physical exhibit that has

(Deposition of Philip H. Jones.)

been offered in this matter as Petitioner's Exhibit A. How would you say those wires extend from the collar or the support?

A. Well, they extend so—from the collar so that they—after they have left the support they sustain an acute angle with a tangent to the body of the scratcher on one side and an obtuse angle on the other. In other words, they don't extend at an angle of 90 degrees, or radially from the body of the device.

XQ.931: Can we agree between us that those wires are angularly disposed, just to differentiate them from the radially disposed wires of Exhibit 2?

A. Yes, that would give us a means of distinguishing between the two.

XQ.932: You are agreeable to using that designation here?

A. Those terms are all right. [1822-447]

* * *

XQ.957: Do you know whether that scratcher or one like it was ever mounted on a pipe?

A. No, I could not say that I do for sure.

XQ.958: Now, if it was mounted on a pipe or on a casing with the scratcher wires, the upturned ends of the scratcher wires in an upward direction in the fashion you [1822-453] have it there now——

A. Yes.

XQ.959: ——do you know whether it would rotate with reciprocation of the casing?

A. I believe it would rotate with reciprocation of the casing, yes.

(Deposition of Philip H. Jones.)

XQ.960: In what direction——

A. Provided it was so mounted on the pipe that it was free to rotate.

XQ.961: In which direction, clockwise or counterclockwise?

A. I would expect it to rotate clockwise.

XQ.962: Now take the other scratcher and put it on your knee as you have that one. That is Exhibit 2.

A. Clockwise looking down on it, I mean.

XQ.963: Clockwise looking down?

A. Yes.

XQ.964: Take the other scratcher, put it on your knee. Now you have it there with the upturned ends in an upward direction, have you not?

A. Yes.

XQ.965: If that were mounted on a casing and the casing was reciprocated and it was free to rotate, in what direction would that scratcher rotate?

A. As I said before, I don't know for certain, [1822-454] but I believe it also would rotate in a clockwise direction.

XQ.966: And that would be due, would it not, to these forces you have indicated? A. Yes.

XQ.967: And those forces you have indicated are a myriad in number?

Mr. Lyon: I don't think he so indicated.

XQ.968: (By Mr. Scofield): You said there were a great many forces acting——

A. All the forces involved are——

(Deposition of Philip H. Jones.)

XQ.969: A great number?

A. ——are variable in their direction and their magnitudes. I don't know how many there are.

XQ.970: You don't know how many there are?

A. No.

XQ.971: Would it be more than one?

A. More than one force?

XQ.972: Yes.

A. Well, I should think there would be.

XQ.973: More than two?

A. Well, I said I didn't know how many there are. If we want to try to get down to numbers I am afraid I can't help you.

XQ.974: You can't help me there?

A. No. [1822-455]

XQ.975: Do you think that scratcher could be set up in an experimental apparatus and tested to see whether it would rotate or not?

A. Yes, I believe it could.

XQ.976: Did you ever see it? A. No.

XQ.977: I believe that you have a second affidavit that was executed by you in connection with the B & W matters that they had in the Patent Office, and I put before you an affidavit which was filed with one of the B & W papers that they filed in the Patent Office, which is entitled "Request for Reconsideration," and that was filed in Interference 84411 on February 2, 1951, but you can ignore that part of it. That was where the particular affidavit was used. I would like to have you look at that affidavit, if you will, and tell me whether or not the

(Deposition of Philip H. Jones.)

signature is yours? A. The signature is mine.

XQ.978: Do you recognize the name of the notary who affixed her name and seal to the affidavit?

A. No.

XQ.979: Or was it a man?

A. No, I don't recognize the name of the notary. I can't even read it. What is it, Frances——

Mr. Lyon: Frances Richmond.

The Witness: ——L. Richmond, I [1822-456] guess.

XQ.980: (By Mr. Scofield): That affidavit is dated March 23, 1951.

A. It says here "Subscribed and sworn to before me this 26th day of January, 1951."

XQ.981: Do you remember between the dates of these two affidavits, the first one in March of 1949, and that one in—what is the date?——

A. It says January 26, 1951.

XQ.982: ——the 26th day of January, whether you had a talk with me with regard to these Jones and Berdine tests?

A. I know that I had a talk with you at my home at one time, but I can't tell you whether it happened before or after, or when it occurred with respect to these affidavits, right offhand.

XQ.983: Where did we have that talk, do you recall? A. Well, we had a talk in my home.

XQ.984: Whereabouts in your home?

A. It was in a shop that I have attached to the house.

(Deposition of Philip H. Jones.)

XQ.985: What did you have in the shop at that time? A. Oh——

XQ.986: Do you recall?

A. I don't know. I had various tools, I don't know.

XQ.987: Were you building a boat? [1822-457]

A. I don't know that I was, but I did build a boat there, and I may have been building it when you were there. I am sort of under the impression that I was.

XQ.988: Did you have a carriage to take this boat over the highway there in the shop?

A. I had such a carriage. The fact that you were aware of it would certainly indicate conclusively that it was there when you were there.

XQ.989: Do you remember who else was there with us?

A. I believe that Mr. Hall, Sr., was there.

XQ.990: Was any of your family there?

A. My wife was there part of the time.

XQ.991: Anybody else besides you an me and Mr. Hall and your wife?

A. Not that I recall. I believe that there was somebody else in the automobile, or there were other people there, I don't know how many. When you left I noticed that there was one more person, at least, maybe more. [1822-458]

* * *

XQ.1007: (By Mr. Scofield): Was it your recollection with respect to the use of the terminology "pseudo-theory" or "pseudo-theoretical"?

(Deposition of Philip H. Jones.)

A. Well, I believe that I used that in either direct or indirect testimony in connection with this present deposition, I guess you would call it in an analysis which I made or attempted to make of the forces which I believe caused rotation of the scratchers.

XQ.1008: And that so-called pseudo-theoretical theory of forces was known to you soon after or in 1940, soon after the Jones and Berdine tests?

A. I don't know when I arrived at that analysis.

XQ.1009: Didn't you say that you arrived at that as soon as you saw the photographs of the cement column? [1822-462]

A. I don't believe I did say that. I think I said that I was convinced they did rotate.

XQ.1010: You don't think that you said that you arrived at that theory when you saw the photographs of the cement columns?

A. I don't think I did. I don't so recall now.

XQ.1011: Had you arrived at that theory by the time you signed this first affidavit?

A. I don't know.

XQ.1012: Which was in 1949?

A. I don't know when I arrived at that analysis.

XQ.1013: At least it is not in the first affidavit, is it?

A. Well, the affidavit speaks for itself. Right now I don't recall having—when any such analysis——

XQ.1014: You read the affidavit? A. Yes.

Mr. Lyon: The affidavit speaks for itself. This

(Deposition of Philip H. Jones.)

witness cannot now add to or subtract from that affidavit.

XQ.1015: (By Mr. Scofield): Do you recall whether the theory is expounded there?

Mr. Lyon: The same objection. The affidavit speaks for itself.

The Witness: I don't recall a theory similar to the one that I presented here. [1822-463]

XQ.1016: (By Mr. Scofield): Do you find it in the second affidavit?

A. A somewhat similar theory, yes.

XQ.1017: So it is in the second affidavit and not in the first?

A. It is related to it, in somewhat the same general type of theory.

XQ.1018: Do you know why it was put in the second and not in the first?

A. I answered questions. I don't know why any of this material was prepared in detail.

XQ.1019: It was prepared for you to sign, was it? A. Yes.

XQ.1020: Who was your secretary at the time that these Jones and Berdine tests were made there in 1949?

A. I don't know, I don't recall her [1822-464] name.

* * *

XQ.1024: Just how was the first affidavit prepared, let us get that straight. [1822-465]

A. I don't know. I think that I became confused in my recent testimony between the first and the

(Deposition of Philip H. Jones.)

second affidavits that we have been discussing. I am under the impression that the procedure used in the second—preparing the second affidavit was the one I previously described as being used to prepare the first one. Now, as to what I did in the preparation of the first one I am at a loss to say now, I don't recollect.

XQ.1025: Did you make any independent investigation as to these Jones and Berdine tests before the first affidavit was executed in the files of the Union Oil Company?

A. I don't understand that question at all.

Mr. Lyon: What do you mean?

XQ.1026: (By Mr. Scofield): Did you make any independent investigation in the files of the Union Oil Company before you executed your first affidavit?

A. By "independent," what do you mean by "independent investigation"? Did I conduct another set of tests?

XQ.1027: No, just investigation as to these tests. Did you, yourself, go into the files of the Union Oil Company and look over the data that was in the files of the Union Oil Company before you executed this affidavit? A. This one here?

XQ.1028: The first one.

A. Well, I certainly do not remember—as I say, [1822-466] I don't remember the details of what I did.

XQ.1029: You made the affidavit in 1949?

A. That is right.

(Testimony of Philip H. Jones.)

XQ.1030: Did you not? A. Yes.

XQ.1031: Did you prepare yourself at all before you executed that affidavit?

A. I don't remember.

XQ.1032: You don't remember?

A. I presently can't recall whether I—whether or not I went through the available data and to what extent I did, if I did.

XQ.1033: Do you remember whether you relied solely on your recollection of those tests, or whether you had the API report before you, or whether you had the Berdine monthly report before you, or what did you rely on?

A. Well, I told you that I do not know specifically what I had before me or how far I went in an investigation that I may have made. I would expect that I did some sort of investigation to refresh my memory on some of the facts, but I do not recall what it was.

XQ.1034: How seriously do you use that word "expect"? Do you recall anything that you did?

A. I presently do not recall what I did, I don't [1822-467] recall whether or not I did.

XQ.1035: You don't recall one way or another?

A. No.

XQ.1036: Before you made the second affidavit do you recall whether you made any additional investigation other than you had made before you signed the first.

A. I don't recall whether or not I went to the Union Oil Company files and did any further in-

(Testimony of Philip H. Jones.)

vestigating of those files. I rather doubt that I did. [1822-468]

* * *

Mr. Scofield: A photostat of this then will be substituted for the original affidavit.

(The document referred to was marked by the Notary Public as Applicant's Exhibit 6, a photostatic copy of which is made a part of this deposition.)

XQ.1037: (By Mr. Scofield): I would like to have you put before you, if you will, the photographs of the columns of cement that were made by the scratchers shown, Figures 14, 18 and 26.

A. 14? You want the columns of cement, not the scratchers?

XQ.1038: I want the columns of cement. I think you will find Exhibit K was made by the Figure 14 scratcher. Do you [1822-469] have that?

A. I have them.

XQ.1039: And I think that Exhibit H was made by the Figure 18 scratcher, and the column made in Figure 27 on the left-hand side was made by Figure 26 scratcher. Is my statement correct?

A. I believe that is right, yes.

Mr. Scofield: I would like to have the reporter mark Page 6 of the B & W Bulletin No. 102 as Applicant's Exhibit No. 7 for identification.

(The document referred to was marked by the Notary Public as Applicant's Exhibit 7 for

(Testimony of Philip H. Jones.)

identification, and made a part of this deposition.)

XQ.1040: (By Mr. Scofield): Will you compare that with the Exhibits K, H and J, and state whether or not in your opinion that the cut made on Page 6 of Exhibit 7 corresponds with any of those that you have before you?

A. It appears to me that the cut shown on Page 6 of the Exhibit 7 was made from the same picture, or even possibly a negative used in producing the left-hand full column of Figure 27.

XQ.1041: Which is Exhibit J?

A. Exhibit J, yes.

Mr. Scofield: I would like to have the reporter mark [1822-470] Page 5 of the B & W Bulletin 104 as Applicant's Exhibit 8 for identification.

(The document referred to was marked by the Notary Public as Applicant's Exhibit 8 for identification, and made a part of this deposition.)

XQ.1042: (By Mr. Scofield): I show you Page 5 of Exhibit 8. I would like to have you compare the cut shown in the lower right-hand corner with the photographs you have before you, and state whether or not it corresponds to any of those photographs.

A. The cut shown on the lower right-hand corner of Exhibit 8 corresponds with the Figure 27, Exhibit J.

XQ.1043: You mean the column at the left hand?

A. The full column at the left hand. A portion

(Testimony of Philip H. Jones.)

of the picture shown in Figure J is shown in the cut on the lower-right-hand corner of Exhibit 8——

XQ.1044: Page 5.

A. ——page 5 of Exhibit 8. It would appear to me that in making the picture of—no, they correspond. There may have been some tilting of the negative while making the cut, but I can't be sure.

XQ.1045: Did you furnish B & W with the negatives in order that those cuts might be made?

A. I, of course, took these pictures, and at one [1822-471] time it is my opinion that those negatives were in the possession of the Research Department, and possibly I obtained them for Barkis and Wright from the files there, and if they weren't in the Union Oil Company files of the Research Department, and I had them, why I either gave the negatives involved, or possibly they weren't available, I couldn't find them, and I might have given them the lantern slides, the negatives made from the lantern slides. I don't recall.

XQ:1046: What is your actual recollection?

A. I don't have one.

XQ.1047: You don't have one?

A. I am of the opinion that I was instrumental in providing them with means for producing that picture.

Mr. Lyon: It is perfectly possible they could have been photographed from the report.

The Witness: They might have been, yes, but I have a recollection I got them, I let them use these

(Testimony of Philip H. Jones.)

lantern slides. Now, I don't know that they used them for this picture, but I would expect that they did. I don't know it of my own certain knowledge.

XQ.1048: (By Mr. Scofield): Did you take any of the files of the Union Oil Company or of the Research Department with you when you left the Union Oil Company? A. Relating to this?

XQ.1049: Relating to this, yes. [1822-472]

A. Well, I kept one or two of the pre-prints.

XQ.1050: Is that all?

A. And I don't know what happened to the negatives for sure. I thought that they were in the files of the Union Oil Company, but I may have had them. I may never even have turned them over to them. I was supposed to have done so, but I may not have done it. I don't know where those negatives are. I have hunted for them, and I can't find them.

XQ.1051: Besides these negatives was there any other data on these Jones and Berdine tests that you took with you when you left the Research Department, I believe in 1948, did you, or 1949?

A. In 1949.

* * *

XQ.1052: (By Mr. Scofield): Did you remove any other data? [1822-473]

A. As far as I know, nothing else. The only thing that I have a question about in my mind is what became of those negatives. Did I ever give them to the—put them into the files, or did I take them out at some time subsequent to putting them

(Testimony of Philip H. Jones.)

in? I don't know. I don't know what happened to them.

XQ.1053: Since you have left the Research Department have you had occasion to go in to the Union Oil Company files, that is, with reference to this Jones and Berdine matter? A. Yes.

XQ.1054: When was that?

A. Well, on one occasion, I believe it was after the trial started in the Federal court, and certainly before this present deposition. I don't remember when it was.

XQ.1055: On that occasion did you see the records or did you ask for the files pertaining to the Jones and Berdine tests? A. Yes.

XQ.1056: Did you on that occasion remove any of the data from those files?

A. I personally remove anything?

XQ.1057: Yes.

A. No, I didn't take any of them with me, and I don't know of anybody else having taken anything out of the files. While I was there I hunted for those negatives [1822-474] again and couldn't find them, and got the librarian to hunt for them and she couldn't find them.

XQ.1058: Do you know the present librarian out there?

A. A Miss La Fortune, Judith La Fortune. I don't know how you spell her name.

XQ.1059: Do you recall any incident where she requested you to return some of this data that had been removed from the files?

(Testimony of Philip H. Jones.)

A. Yes. She, as I recall it, gave me fits about these negatives. I think neither of us knew where they were.

XQ.1060: When was that?

A. It was in an entirely friendly manner.

XQ.1061: I appreciate that. When was this?

A. I told you that I think some time between the time—after the Federal court proceedings had stopped and the start of these proceedings.

Mr. Scofield: That is all the [1822-475] cross-examination.

* * *